

Review of Judgements and Data on
Anti Corruption Reform Outcomes

BEHIND THE STATISTICS

Publisher:

Mreža za afirmaciju nevladinog sektora - MANS
www.mans.co.me

Dalmatinska 188, Podgorica, Montenegro
Tel/Fax: +382 20 266 326; +382 20 266 327
E-mail: mans@t-com.me

Authors:

Veselin Radulović
Vanja Čalović
Vuk Maraš

Expert support:

Aleksandar Mašković
Mila Radulović
Radovan Terzić
Jelena Mandić

Administrative support:

Veselin Bato Bajčeta
Vuk Janković
Anđela Nicović
Nikoleta Lagator
Slavica Medojević
Dimitrije Ostojić
Bajo Danilović

Traslation:

Tamara Jurlina
Azra Kosovac

Design and prepress:

Saša Raičević

Printed by:

3mmakarije, Podgorica

Printing:

500

Podgorica, July 2011

CIP - Каталогизација у публикацији
Централна народна библиотека Црне Горе, Цетиње

ISBN 978-9940-601-00-3
COBISS.CG-ID 18781456

Contents:

INTRODUCTION	8
EXECUTIVE SUMMARY	9
PART I - REVIEW OF CORRUPTION JUDGEMENTS.....	12
1. PURVIEW OF RELEVANT INSTITUTIONS.....	14
1.1. Jurisdiction of courts.....	14
1.2. Purview of prosecution	16
1.3. Tripartite commission	17
2. ACCESS TO COURT JUDGEMENTS	19
2.1. Secret judgments	20
2.2. Other restrictions of access to court judgments	24
2.3. Changed case law.....	26
3. STATISTICS ON JUDGMENTS FOR CORRUPTION	28
3.1. Indictments.....	29
3.2. First instance judgments	31
3.2.1. Convictions	32
3.2.2. Acquittals	35
3.2.3. Dismissals	35
3.3. Second instance judgments	35
3.4. Data by courts	36
3.4.1. First instance courts	36
3.4.2. Second instance courts	45
4. PROFILE OF THOSE ACCUSED FOR CORRUPTION	48
5. LENGTH OF COURT PROCEEDINGS	51
6. PROBLEMS NOTED BY TYPES OF JUDGMENTS	55
6.1. Convictions	55
6.1.1. Types of sanctions pronounced.....	55
6.1.2. Legal framework.....	56
6.1.3. Reducing sentences as a rule, not as an exception.....	56
6.1.4. Uneven penal policy	58
6.1.5. Compensation for damages and forfeiture of proceeds of corruption	63
6.1.6. Application of covert surveillance in proving corruption.....	66

6.2. Expert witnesses and acquittals	68
6.3. Dismissals and responsibility of prosecutors.....	69
6.3.1. Criminal prosecution barred by limitation.....	70
6.3.2. Dismissal after multiannual proceedings.....	73
6.3.3. Dismissal of charges on the account of wrong jurisdiction.....	75
7. CASE LAW FOR MOST FREQUENT CORRUPTION OFFENCES:	77
7.1. Abuse of office	77
7.1.1. Frequency of various offences in indictments and judgments	77
7.1.2. Legal framework.....	77
7.1.3. Law amendments as an impediment to fight against corruption	80
7.2. Abuse of authority in business.....	84
7.2.1. Frequency of offences in indictments and judgments	85
7.2.2. Legal framework.....	85
7.2.3. Discretionary authorities of prosecutors in qualifying offences.....	87
7.3. ACTIVE AND PASSIVE BRIBERY	88
7.3.1. Frequency of offences in indictments and judgments	88
7.3.2. Legal framework.....	88
7.3.3. Changes in case law after changed jurisdiction of courts.....	90
 PART II - REVIEW OF THE ANTI-CORRUPTION REFORM OUTCOMES.....	92
1. THE NATIONAL COMMISSION FOR MONITORING IMPLEMENTATION OF REFORMS.....	94
1.1. Structure and funding of the national commission.....	94
1.2. Activities of the national commission	95
2. ANTI-CORRUPTION REFORMS - COVERING UP AS A PRETEXT FOR THE VIOLATION OF HUMAN RIGHTS.....	98
2.1. Disclosure of the agreement with m-tel.....	100
2.2. Contents of the agreement	104
2.3. Proceedings before the constitutional court.....	104
2.4. Application with the european court for human rights.....	107
2.5. Proceedings before the basic court in podgorica	108
2.6. Reaction of the agency for personal data protection	108

3. ACCESS TO DATA ON IMPLEMENTATION OF REFORMS.....	110
3.1. Administrative proceedings	110
3.2. Administrative dispute	111
3.3. Data by institutions	112
3.4. Recommendations for improving access to data on reforms	113
4. REPORT ON IMPLEMENTATION OF THE ACTION PLAN FOR THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME	114
4.1. General data on implementation of the action plan	115
4.2. Corruption	116
4.2.1. Priority in supressing corruption at the political and international level ..	116
4.2.2. Fields of Particular Risk	122
4.2.3. Prevention of corruption in law enforcement agencies	126
4.3. Organised crime	130
4.3.1. Situation analysis	130
4.3.2. Predominant forms.....	130
4.3.3. Prevention	131
4.3.4. Cooperation between state bodies.....	132
4.3.5. Regional and international cooperation	132
4.4. MONITORING	133
Annexes	134
Annex 1: Review of agendas of the new National Commission sessions	134
Annex 2: consolidation of evaluations of reforms	136
Annex 3: responses of institutions to requests for free access to information regarding implementation of measures set forth in the action plan.....	144
Graphs	146
Tables	147

INTRODUCTION

This review was developed in an effort to assess the impact of anticorruption reforms, in particular the work of the judiciary in fight against corruption. It is an attempt to determine what stands behind the official, hard-to-grasp statistics and gauge the actual outcome of court proceedings for corruption offences.

Part One contains the review of court judgements for corruption of ten basic courts which allowed access to case law, as well as two high courts and the Appellate Court, posting their judgements on their respective websites. This part contains information on purview of courts and prosecution, problems in access to court judgements, as well as statistics. Separate chapters analyse the structure of those accused of corruption, the length of court proceedings and indicate the problem areas in adjudication of corruption offences.

Part Two refers to the implementation of the Anticorruption and Organised Crime Action Plan, approved by the Government, envisaging numerous reforms of all relevant institutions. This part offers official data on the outcome of specific activities envisaged by the Action Plan. A separate chapter points to challenges for the work of the National Commission, the government body in charge of the reform coordination. This part contains a case study indicating that the police abuses reforms to extend their authorities which constitutes violation of human rights. A separate chapter specifies the problems we faced in gathering data on reform outcomes.

All the data used herein were procured from the relevant institutions by invoking the Law on Free Access to Information.

The preparation of this publication was funded by the UK Embassy to Podgorica and European Union, through EU Delegation in Montenegro. The opinions and views presented in this publication are solely responsibility of MANS and can not be considered as views of the donors that have financially supported this project

EXECUTIVE SUMMARY

The official data on the work of courts, prosecution and police are gathered by the Tripartite Commission composed of members of the said institutions publicising semi-annual statistical reports on corruption offences.

MANS requested from 15 basic courts the enforceable decisions over the period between 2006 and 2010. Only three courts made all judgements available, and ten courts enabled partial access to case law. Seven courts restricted access to judgements at some stage designating them as secret, justifying the decision by saying that their publication would jeopardise the privacy of the parties to the proceedings. Such decisions were upheld by the Ministry of Justice, as well as the Administrative and the Supreme Court, which post their judgements on the website.

This review was done based on 155 first instance cases for corruption offences trialled before ten basic courts and two high courts, as well as 36 second instance judgements.

The steady resistance of courts to enable access to judgements leads to suspicions of attempting to conceal behind the statistical data the actual achievements of the judiciary in fight against corruption. In many instances such suspicions prove to be justified. The examples show that some courts fictitiously inflate the statistics submitted to the Tripartite Commission, by including in them also those cases referring to other offences, such as illicit fishing or domestic violence. Moreover, the data available on websites of high courts differ from the Tripartite Commission reports.

Two thirds of cases that the courts made available to us referred to evasion of taxes and other dues, and petty crimes. It is exactly in these proceedings that convictions were most often made, which embellish the statistics on the results of the judiciary in fight against corruption.

In the majority of court proceedings persons were accused of abuse of office, and in the past nine years, the relevant provision stipulating this criminal offence was amended four times. Thanks to the amendments to laws, some “ping-pong” cases were created lasting for years and causing huge costs for the budget. A large number of court decisions made in such cases remain inconclusive, but make their way into the court statistics and possibly contribute to presentation of inflated data of court activity.

While the basic courts had only one judgement for criminal offences of active and passive bribery, most of high court first instance cases refer to these offences. Majority of such cases coincides with legislative amendments in the jurisdiction of courts, but also the newly introduced obligation for courts to report upon the indicators related to corruption cases.

The court proceedings for corruption that we had access to lasted on average over 16 months, with first instance cases before high courts lasting on average two times longer than the proceedings before basic courts. Some court proceedings last unreasonably long through the fault of prosecution and courts, causing huge costs which are most often charged to the court budget. On not a rare occasion, negligence or misconduct in performance of official duties by state prosecutors cause criminal statute of limitations and passing of judgements dismissing charges.

Public officials are rarely accused of corruption, even more rarely convicted, while the courts adjudicated negligibly small amounts of damages caused by their criminal offences. The seized proceeds of corruption confirm concerns that courts conducted proceedings for least serious forms of these offences.

The case law shows that often injured institutions did not ask officials or civil servants to compensate for the damages caused by corruption. Moreover, prosecutors also lack capacities to assess the damages caused, thus prosecuting for lesser charges than the actual offences committed.

Courts take very lenient penal policy, particularly for criminal offences of corruption committed by public officials, in many cases in contravention to law. High courts adjudicating in first instance cases had somewhat harsher penal policy compared to the basic ones. While basic courts pronounced suspended judgements for officials who abused office and caused damages to the budget, high courts pronounced imprisonment sentences to individuals offering bribe to traffic wardens, after having kept them in remand prison.

Uneven penal policy among courts, but also within courts, constitutes a distinct problem. Also, courts have conflicting interpretations of legislative amendments, having various consequences on the outcome of criminal proceedings. Likewise, due to inefficiency of courts, legislative amendments referring to jurisdiction of courts have on many an occasion resulted in criminal statute of limitation and dismissal of charges. Some examples lead to the conclusion that neither the prosecution nor the courts have adequate professional capacities even to recognise their own jurisdiction, which leads to negative outcomes of criminal proceedings.

Frequent and inconsistent legal amendments lead to the same persons having committed same offences being charged and convicted of various crimes, and consequently being pronounced varying sanctions, while insufficient capacities and lack of responsibility of courts and prosecution to a great extent threaten the impact of new provisions. Hence, the conclusion imposed is that numerous inconsistent legislative amendments, instead of being an effective anticorruption tool, became a tool to assist persons who were or will be charged.

Finally, this review shows that all three branches of power - legislative, judicial and executive - show some serious lack of professional capacities and will to suppress corruption.

Part Two of the publication contains information on the carrying out of reforms envisaged by the Action Plan for implementing the Anticorruption and Organised Crime Strategy in 2010.

The data show that in 2010 only 13% of all planned reforms were implemented, half of the activities envisaged are underway, and for some 40% of the activities the implementation has not even started yet.

Most of the reforms implemented are administrative in nature, and thus could not have contributed significantly to the actual reduction in corruption and organised crime levels. These mostly referred to training, procurement of equipment and space, the same as was done during the previous years. The institutions would conclude agreements, adopt secondary legislation and conduct media campaigns.

On the other hand, key activities that would yield substantial results in fight against corruption and organised crime have not even started. The Parliament of Montenegro has not yet set up a separate working body to oversee the reforms in the area of anticorruption and organised crime. Domestic legislation has not been fully harmonised with the international conventions pertaining to organised crime, many important pieces of anticorruption legislation have not been amended or new non-compliant provisions were adopted.

There were no enforceable judgments for permanent forfeiture of assets as proceeds of corruption and organised crime, while temporarily frozen assets are less than one million euro of total value. The Special Investigation Team conducted only four investigations and two financial investigations for the whole 2010.

Police Directorate did not make the crime mapping of Montenegro, nor prepare the report on the impact of organised and serious crime from the region on Montenegro. National Europol office has not been established yet.

The data show that institutions in charge of anticorruption reforms disclose only one in four pieces of information on their performance. There is a disconcertingly high number of institutions in breach of the Free Access to Information Law, especially regarding the deadlines to respond to applications or restricting access to requested data, ignoring the request and second instance decisions.

While the specific results of anticorruption and organised crime efforts are rather limited, the police used the reforms as an excuse to extend its authorities, and for more than two years gathered information on private communications of citizens, thus being in contravention to the right to privacy enshrined in our Constitution.

Thanks to secret agreements with the telecommunication operators, the police have autonomously, arbitrarily and without limitation accessed their data bases. On the other hand, the telecommunication customers had no access to effective control.

After three years of judicial and other proceedings, MANS finally managed to force the Police Directorate to disclose secret agreements. Subsequently, the Agency for the Protection of Personal Data established the violation of the right to privacy and ordered the police to delete the data thus gathered.

However, for years we have been waiting for the Constitutional Court to assess whether the existing provisions make the police right or are in contravention to international conventions and Montenegro's Constitution.

A separate part of the publication contains information on the activities of the National Commission for monitoring the implementation of the Anticorruption and Organised Crime Strategy, established by the Government.

Thanks to persistent proposals by MANS, after three years, the National Commission sessions have finally been made open for the public, this body has been granted authorities to act as per civic complaints, and the Action Plan has been revised with the addition of a number of new reforms in areas particularly prone to corruption, such as construction, privatisation, and public procurement. Nevertheless, the implementation of reforms is yet to start and yield tangible results.

PART I

REVIEW OF CORRUPTION JUDGEMENTS

1. PURVIEW OF RELEVANT INSTITUTIONS

Frequent amendments to laws caused the change in jurisdiction of courts adjudicating corruption cases in the first instance. Some cases have several times been “transferred” from one court to another, causing additional delays and increase in costs, and not infrequently this led to the statute of limitation in criminal prosecution. At the same time, transferring of cases led to the fictitious increase in statistics related to corruption cases.

Amendments to laws changed also the powers of prosecutors, and thus now the Special Prosecutor is in charge of corruption offences. Instead of court-led, now prosecutor-led investigation has been introduced, and the authorities extended in the use of covert surveillance measures in establishing evidence of corruption. Nevertheless, the practice has shown that inadequate capacities and lack of accountability of the prosecution may to a great extent jeopardise the actual impact of the new provisions.

For instance, the subject matter jurisdiction is determined in the indictment by the state prosecutor in launching the proceedings, and practice shows that the qualifications made by prosecutors on not a rare occasion prove to be wrong, which may lead to acquittal of perpetrators on sole grounds of procedural errors.

This forcefully leads to a conclusion that both the executive and the legislative branch have shown a serious lack of professional capacities and will to suppress corruption, given that frequent amendments to laws, instead of being a tool in abating corruption have actually turned into a means to assist the individuals who are or will be facing corruption charges.

Finally, the data referring to the work of the courts, prosecution and the police are gathered by the so-called Tripartite Commission composed of the members of these institutions publicising semi-annual statistical reports. Nevertheless, such reports do not contain any analysis nor are indicative of problems, although that would be one of the Commission tasks.

1.1. Jurisdiction of courts

The Montenegrin court system has three instances. It consists of 15 basic courts, two high courts, the Appellate Court and the Supreme Court, two Commercial Courts and one Administrative Court. The two High Courts, the one in Podgorica and the other in Bijelo Polje, have Specialised Departments for Organised Crime, Corruption, Terrorism and War Crimes.

Since 2004, law amendments have to a great extent affected the jurisdiction of courts, as can be seen taking the example of to the single most frequently encountered criminal offence in case law, the abuse of office.

Since the adoption of the Criminal Code in 2003, which started to be applied as of 02 April 2004, high courts held the subject matter jurisdiction to adjudicate in the first instance for the gravest form of the criminal offence known as the abuse of office.¹ With the application of the new Criminal Code, basic courts held the jurisdiction to adjudicate in the first instance for the abuse of office charges, regardless of the form of the offence.

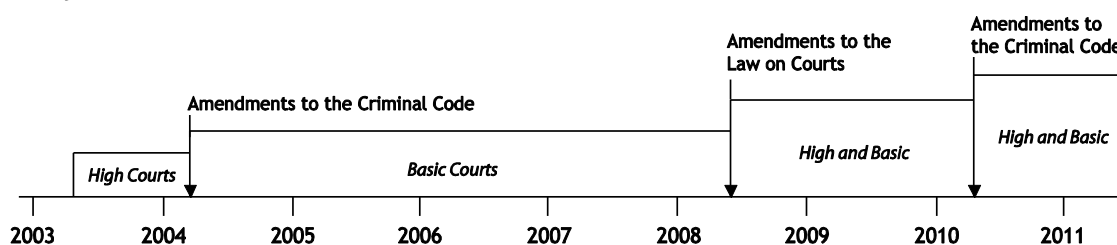
¹ Article 11 of the then valid Law on Courts (Official Gazette of the Republic of 20/95) stipulated the jurisdiction of high courts to hear and determine in the first instance the offences with envisaged punishment of over 10 years' imprisonment, and according to the Criminal Court in effect prior to 02 April 2004 the gravest form of abuse of office was punishable by over 10 years of imprisonment.

The new changes in jurisdiction for first instance adjudication for this offence came about with the adoption of the 2008 Law amending the Law on Courts², envisaging that high courts now held first instance jurisdiction for abuse of office punishable by eight or more years of imprisonment. By virtue of Article 416 of the Criminal Code and envisaged sanctions for this offence, basic courts retained first instance jurisdiction only for the basic, non-qualified form of this offence.

The 2008 Law amending the Law on Courts stipulates that case files for such offences received by the beginning of operation of specialised departments in high courts, will be closed in courts holding jurisdiction as per previous provisions, and should the first instance judgment be quashed after the amendments have entered into force, the case would be transferred to the court holding jurisdiction as per the Law on Courts amended in 2008.³

The 2010 amendments to the Criminal Code had a direct bearing on the proceedings before high courts, where responsible persons in a company, an institution or other entity were heard for graver forms of abuse of office.

In such proceedings, high courts relinquish subject matter jurisdiction and transfer such cases to basic courts with the justification that the factual description in the indictment recitals referring to abuse of office from paragraph 4⁴ may be qualified as another offence - abuse of authorities in business for which, given the envisaged sentence, the basic courts hold jurisdiction in the first instance.



Graph1: Changes in jurisdiction of courts (2004- 2010)

Incidentally, the abuse of authorities in business from Article 272 of the Criminal Code was first introduced by the 2010 amendments to the law, and entered into force with the day of amendment, and by virtue of Article 416 envisaging that the responsible person in a company, an institution or another entity could no longer be held culpable for abuse of office.

In addition to numerous such cases being transferred on many occasions from one court to another and the fact that courts are on a constant mission of identifying the law most lenient for the accused, the most recent 2010 amendments may cause yet another problem in such cases.

Namely, high courts have already taken a stand that such cases involve the offence of abuse of authority in business as referred to in Article 271 of the Criminal Code, and thus it is up to basic courts to decide as per charges not even envisaged back at the time when the offences now trialled were committed. Invoking the continuity with the criminal offence from earlier Article 416 paragraph 4 of the Criminal Code could mean serious jeopardy to the legality principle and too wide an interpretation of law, which is unacceptable in criminal law.

² Official Gazette of Montenegro 22/2008 of 02.04.2008

³ Article 35 paragraphs 2 and 3 of the Law amending the Law on Courts (Official Gazette of Montenegro 22/2008 of 02.04.2008)

⁴Stipulating that the responsible person in a company, an institution or another entity is punishable by the sentence envisaged for this offence

Nevertheless, given such a stance of high courts, it is to be expected to see basic courts decide as per charges for this new offence, starting from rather similar description of the two offences. In this regard, it is noteworthy that the new offence of abuse of authority in business from Article 272 of the Criminal Code does not fall among corruption offences. However, given the case law so far, it is to be expected that potential judgments in pertinent cases would unjustifiably find their place in anticorruption statistics.

1.2. Purview of prosecution

The state prosecution largely follows the court system structure. Each state prosecution office is headed by a state prosecutor, assisted by one or more deputy prosecutors.

Since 2004, the Supreme State Prosecution involves an Organised Crime Department whose subject matter jurisdiction was extended by the Law amending the Law on State Prosecution of 04 July 2008 to include corruption, terrorism and war crimes. The prosecutors within the Specialised Department for Organised Crime, Corruption, Terrorism and War Crimes are authorised to act before the special panels of the two high courts.

The amended Criminal Procedure Code⁵ stipulates that this Code will be in application for organised crime, corruption, terrorism and war crimes as of 26 August 2010⁶.

The provisions of the new Criminal Procedure Code⁷ lay down a range of new instruments and tools, the most significant being the changed concept of investigation, now prosecutor-led.

To date, in their actions prosecutors showed lack of diligence and competencies, and by failure to exercise their authorities, they led to statute of limitation in criminal prosecution and dismissal of indictments (more details in Chapters 6 and 7). The question inevitably arising here is whether the prosecution as such has even the minimum capacities needed to lead investigation and cope with their extended mandate, i.e. whether they would be able to respond to the challenges posed by the new Code.

The amendments imply that the subject matter jurisdiction in organised crime and corruption cases is primarily decided by the special prosecution department with their initial file. The case law review showed that wrong determinations by the prosecution are not such a rare occurrence (more details in Chapter 6). Apart from realistically possible cases where the Special Prosecution could make a mistake in qualifying an offence it charges someone with in its indictment proposal, partial application of the Code may cause additional problems.

Namely, the new Criminal Procedure Code⁸ extends the scope of offences for which covert surveillance may be ordered. According to the previous Code, such measures could have been ordered only for offences punishable by at least ten-year imprisonment and for organised crime cases. As per the new Code⁹ covert surveillance may be ordered, inter alia, for corruption offences including:

⁵ Official Gazette of Montenegro 49/2010 as of 13 August 2010

⁶ The same Code envisages it would be in full application for all offences as of 01 September 2011.

⁷ Official Gazette of Montenegro 57/2009 as of 18 August 2009

⁸ Official Gazette of Montenegro 57/2009 as of 18 August 2009

⁹ Article 158 item 3

- money laundering, causing false bankruptcy, misused evaluations, passive bribery, active bribery, disclosure of official secret, trading in influences, as well as the abuse of authority in business, abuse of office and fraud punishable by eight or more years of imprisonment;

In organised crime, corruption, terrorism and war crime cases, this Code is in application as of 26 August 2010, so covert surveillance may now be ordered also for the above corruption offences.

Article 159 of the Code empowers the prosecution to stipulate by its order some of the covert surveillance measures, while others may be approved by the judge in charge of the investigation, at the prosecutor's proposal.

There is a huge room for abuse of such authorities by state prosecutor and the violation of fundamental human rights of people against whom such measures would be used contrary to the law. Namely, some such measures depend solely on the evaluation of the state prosecutor and it is enough that he believes that the acts in question involve organised crime or corruption to be able to pass the order for covert surveillance.

Hence, a question might be raised here regarding the admissibility of evidence a state prosecutor might obtain through the use of covert surveillance should the subsequent proceedings reveal that the offence in question does not involve organised crime or corruption.

It is, therefore, paramount for special departments of high courts to assess properly the state prosecutor's qualifications of offences. The practise to date showed that such departments would very rarely and far apart relinquish jurisdiction and that they accepted without arguing the qualifications offered by the special prosecution (more details in Chapter 6).

1.3. Tripartite commission

By the decision of the Deputy Prime Minister for European Integration, the Tripartite Commission was set up in October 2007 to analyse the organised crime and corruption cases.

The Tripartite Commission is tasked, following the set unified methodology, with statistical processing of data, analysing and reporting periodically on actions of the police, the prosecution and courts as per criminal reports for organised crime and corruption.

The conclusions adopted at the meeting of the President of the Supreme Court with presidents of all courts, held on 5 June 2009, mandated all courts to set up and maintain special records of organised crime and corruption cases to be made available at the request of the Tripartite Commission.

The Tripartite Commission published every six months the data on cases referring to corruption and organised crime. Although the Commission was tasked with analysing the statistics, their report contains no analysis nor renders any conclusions so as to obstacles to efficient corruption adjudication.

The Tripartite Commission classified 18 offences as involving corruption:

- money laundering (Article 268 of the Criminal Code (CC));
- violation of equality in business operation (Article 269 of CC);
- causing bankruptcy (Article 273 of CC);
- causing false bankruptcy (Article 274 of CC);
- abuse of authority in business (Article 276 of CC);
- false balance (Article 278 of CC);
- abuse of evaluation (Article 279 of CC);
- disclosure of business secret (Article 280 CC);
- disclosure and use of stock exchange secret (Article 281 of CC);
- abuse of office (Article 416 of CC);
- negligent performance of duties (Article 417 of CC);
- trading in influences (Article 422 of CC);
- passive bribery (Article 423 of CC);
- active bribery (Article 424 of CC);
- disclosure of business secret (Article 425 of CC);
- abuse of monopoly (Article 270 CC);
- negligent performance of business activities (Article 272 of CC);
- fraud in service (Article 419 of CC).

2. ACCESS TO COURT JUDGEMENTS

The steady opposition of courts to making their work public and enabling access to judgments leads to suspicions that they are trying to conceal behind the statistics the actual performance of courts in fight against corruption.

In order to see what is hidden behind the statistics, MANS filed three applications with each court for copies of enforceable court judgments in corruption cases from the beginning of 2006 to the end of 2010.

Out of the fifteen basic courts, only three submitted copies of enforceable judgments in corruption cases over the entire period, and ten provided judgments from at least one of the requested periods¹⁰.

Seven courts, at least in some stage, prohibited access to judgments, denoting them as secret and justifying this by saying that their disclosure would jeopardise the privacy of parties to the proceedings, since judgments contain personal data of the accused. Such decisions were upheld by the Ministry of Justice acting as per appeals, as well as the Administrative Court and the Supreme Court, which otherwise post their judgments on their respective websites¹¹.

The largest courts restricted access to judgments in several ways. The court in Bar denoted them as secret, the one in Nikšić enabled examination within the court premises only, which prevented any attempt of a serious analysis. By far the largest court in Montenegro, the Basic Court in Podgorica, stated they did not hold the records per type of offence, and thus were unable to provide only the judgments in corruption cases. This leads to the conclusion that the court with the greatest caseload keeps arbitrary and unreliable records providing such data to the Tripartite Commission or else willingly submit false figures and, therefore, forbid examination of judgments.

Some courts submitted the judgments for offences which do not involve corruption, including, for instance, illicit hunting or domestic violence. The data available on the court websites also differ from the ones featuring in the Tripartite Commission's report¹².

Hence, there is a huge cause for concern that courts fictitiously inflate the statistics submitted to the Tripartite Commission by including even those cases which refer to other offences.

¹⁰ The first applications referred to judgments between beginning of 2006 and the end of September 2009, the second asked for judgments from October 2009 to September 2010, and the third from October to the end of 2010.

¹¹ www.vrhsudcg.gov.me, www.upravnisudcg.org

¹² For instance, according to the Tripartite Commission's data, the High Court in Bijelo Polje in 2010 closed ten first instance proceedings in corruption cases, and the court's website has a mention of only eight out of these and four more not included in the report. Similarly, for the High Court in Podgorica, the Tripartite Commission claims to have closed 35 first instance proceedings, but 16 are missing from their website, while three judgments are posted which are not mentioned by the Tripartite Commission.

Table 1 shows responses of courts upon requests for judgments.

Basic Court	Response to request for copies of judgments		
	Period 01.01.2006- 30.09.2009	Period 01.10.2009- 30.09.2010	Period 1.10.2010.- 31.12.2010.
Basic Court Herceg Novi	Allowed	Allowed	Not allowed
Basic Court Kolašin	Allowed	Allowed	No response
Basic Court Plav	Allowed	Allowed	NA
Basic Court Rožaje	Allowed	Allowed	Allowed
Basic Court Žabljak	Allowed	Allowed	Allowed
Basic Court Danilovgrad	Allowed	NA	NA
Basic Court Pljevlja	Allowed	NA	No response
Basic Court Berane	Allowed	Allowed (examination)	No response
Basic Court Bijelo Polje	Allowed	Not allowed	Not allowed
Basic Court Cetinje	Not allowed	Allowed	Allowed*
Basic Court Nikšić	Allowed (examination)	No response	Allowed (examination)
Basic Court Bar	Not allowed	Not allowed	Not allowed
Basic Court Kotor	Not allowed	Not allowed	Not allowed
Basic Court Ulcinj	Not allowed	Not allowed	No response
Basic Court Podgorica	Not allowed	Not allowed	Not allowed

* Access was allowed, but judgments were never provided

Table 1: Responses of basic courts as per requests for providing copies of enforceable judgements in corruption cases

2.1. Secret judgments

Basic Court in Bar

As per the first request for information, the Basic Court in Bar restricted access invoking the provision of the Free Access to Information Law (FAI Law) protecting privacy and personal interests of parties, saying that publication of judgements would **jeopardise the private life of parties**, given that the judgments contain personal data of the accused.

As per the appeal filed by MANS, the Ministry of Justice (MoJ)¹³ was of the opinion that the Basic Court in Bar did apply the law properly and invoked the protection of privacy of the parties to the proceedings. The MoJ states that the Law on Courts stipulates that courts are obliged to provide access to court files to the parties only.

The MoJ further added that the Criminal Procedure Code envisages access to court files for anyone having justified interest, based on the permission of the court president and stated that:

*“The examination of court files, envisaged by the procedural law, is subject to a very strict procedure, particularly in criminal cases, thus access to such information implies the **supremacy of the Criminal Procedure Code over the FAI Law**”.*

¹³ Decision no 01-4886/10 of 28.08.2010.

Finally, the MoJ concludes:

“It is up to the free appreciation of the court president whether a certain person holds a justified interest in transcription, copying or filming individual criminal case files.”

Notwithstanding that the Law on Courts stipulates the right of the court president to assess the interest for inspection of court files on the case-by-case basis, this is not applicable to cases which ended in enforceable judgments. This would prevent the public from having an insight into the case law which is in all countries subject to studies and comments, and is used in other court proceedings.

Judgments are passed in the name of the people, court sessions are public, held in camera only as per an explicit court order; judgments are pronounced publicly, their contents are reported by the media present at trials.

As for the protection of privacy of parties to the proceedings, the FAI Law envisages also the possibility of deleting parts to which access is restricted¹⁴.

It means that the courts, should they deem it necessary to protect the privacy of the people concerned, were obliged to **delete personal data**, but make public the remainder of the judgment. As mentioned earlier, the Supreme, the High, the Appellate, and the Administrative Courts post their judgments on their respective websites, containing the initials as reference to the parties in the proceedings.

The claims propounded by the MoJ that the examination of certain court files, especially criminal case files, is subjected to a very strict procedure stipulated in the Criminal Procedure Code, not the FAI Law, is indicative of misapplication of substantive law. Namely, Article 1 paragraph 1 of the FAI Law stipulates:

Access to information held by government agencies shall be free and exercised in the manner laid down by this Law.

Article 8 of the same Law stipulates:

A government agency is obliged to make possible to any applicant to access the information or a part thereof, except in cases provided for by this Law.

Thus, access to information is not regulated by other laws, in this case the Criminal Procedure Code, but the FAI Law is a *lex specialis* setting the procedures based on which the authorities enable access to information they hold. Moreover, all authorities are obliged to enable access to information except in cases envisaged by the FAI Law, not any other law.

It is beyond dispute that authorities also include courts, and thus the public must have access to enforceable judgements, or any other data not restricted access to by Article 9 of the FAI Law.

The provision of Article 509 paragraph 1 of the Criminal Procedure Code stipulates that the data on pre-trial procedure and investigation of organised crime constitute official secret. Nevertheless, the same provision does not stipulate, nor it could, that information and evidence used in judicial proceedings may be secret, as concluded by the MoJ.

¹⁴ FAI Law, Article 13, paragraphs 2, 3, 4, and 5.

The Basic Court in Bar restricted access to judgments even as per the second application with the same rationale. In its appeal, MANS drew attention to **non-uniform practice** and the fact that some courts do enable access to judgments, while others denote them as secret.

Deciding as per the appeal, the MoJ¹⁵ made the following point:

“...it is in the sole authority of the court president to decide whether the request to submit data is justified, i.e. it is his sole right to autonomous and independent assessment whether the applicant has a justified interest to procure the requested information. Consequently, the ifact that all basic courts in Montenegro acted as per the request for the same information, as deemed by this Ministry, and in line with the above provisions of the law, does not presume the legal obligation for the President of the Basic Court in Bar to act in the same manner”.

According to Article 2 of the FAI Law, access o information held by authorities is based on the following principles:

- 1) free information;
- 2) **equal conditions for the exercise of the right;**
- 3) openness and publicity of the activities of authorities;
- 4) urgency of the procedure.

Hence, all courts are obliged to enable equal conditions for the exercise of the right to access information and work in accordance with the principles of openness and publicity. Therefore, it is beyond comprehension how some court presidents may enjoy the discretion to decide whether information they hold should be publicly available or not, especially given that higher court instances already publicise such information, as well as some basic courts.

MANS lodged a complaint with the Administrative Court still pending.

The Basic Court in Bar acted along the similar lines as per the third application.

Basic Court in Kotor

Very much like the one in Bar, the Basic Court in Kotor deemed that the publication of judgements would jeopardise the right to **privacy** of the parties to the proceedings.

In addition, the Kotor-based court justified restricting access to its judgments by stating that we **failed to prove a legitimate interest** to procure such information. Namely, this Court deemed that the procedure for access to information was regulated by the Criminal Procedure Code, the Law on Courts, and the judicial Rules of Procedure, and not the FAI Law, and thus believes that MANS was obliged to prove a legal interest in procuring enforceable judgements.

The MoJ rejected MANS’s complaint and upheld the claims of the Basic Court in Kotor with the same rationale as in the case of the Bar-based court.

MANS lodged a complaint with the Administrative Court which was rejected deeming that the publication of judgements would jeopardise the privacy of the parties to the proceedings and stating that¹⁶:

„After the public hearing, court rulings are pronounced publicly orally to people having the legal interest in the given ruling”.

¹⁵ Decision no 01-7578/10 of 17.12.2010.

¹⁶ Judgment U.broj 1901/10 of 08 December 2010

The Administrative Court at the same time both confirms that judgment should be secret, because it protects the privacy of the parties to the proceedings, and confirms that judgments are public since they are publicly pronounced orally. The question which arises here is how it is possible that the publication of already publicly pronounced judgments would jeopardise anyone's right to privacy.

The Administrative Court also points out that court rulings are publicly pronounced to persons with legal interest, which is not the case, because, as a rule, judgments are pronounced publicly, thus before the accused, but also other people following trials, such as **members of the press**.

Article 3 of FAI Law reads:

Publishing the information filed with government agencies shall be in the public interest.

The rationale provided by the Government accompanying the Draft FAI Law, related to Article 3, says:

"The public interest in publication of information includes all individual or other narrower interests identical to that one, thereby the procedure for the exercise of the right to access information excludes any possibility and the need to justify the existence of an interest by the applicant."

The Law, thus, lays down the obligation on the part of authorities to make the information available, without the obligation of the applicant to justify the interest in requesting information. Such a stance has been meanwhile confirmed through the case law of the Administrative Court.

MANS lodged a request for extraordinary review of the court ruling to the Supreme Court which rejected it as unfounded.

In its ruling¹⁷ the **Supreme Court** stated that only **the persons proving legal interest in line with the Criminal Procedure Code**, and not the FAIL Law, may be made available enforceable judgments.

Moreover, the Supreme Court upheld that enforceable court rulings have the nature of **secret documents**, with restricted access, thus confirming the claims of the Basic Court in Kotor that the disclosure of judgments would violate the **right to privacy of the parties** to the proceedings.

As per the second request, we received identical response from the Basic Court in Kotor, the same MoJ's decision as per the appeal, and the case is still pending before the Administrative Court.

The Court responded in the same manner even to the third application.

Basic Court in Herceg Novi

In responding to the applications, this Court did not allow access to judgments in the manner identical to the Kotor-based court. Such decisions of the Basic Court in Herceg Novi were upheld by the MoJ, the Administrative and the Supreme Courts, respectively.

However, contrary to its own decision, and even the Supreme Court's judgment, this Court made us available all the judgments as per the first and the second application.

¹⁷ UVP.br.47/11 of 14 February 2011

Basic Court in Ulcinj

The Basic Court in Ulcinj **did not respond** to the first application by MANS requesting enforceable judgments in corruption cases from the beginning of 2006 to the end of September 2009. MANS lodged an appeal and a repeated appeal, which remained unanswered by the MoJ, as the second instance body in the administrative procedure, and then the complaint to the Administrative Court on the account of the silence of administration.

With the case still pending, we filed another application requesting enforceable judgments for the period after September 2009. The Basic Court in Ulcinj **did not respond** to it, so we lodged an appeal on the grounds of the silence of the administration.

It was only upon the repeated appeal that the Basic Court passed the decision responding to both applications **not allowing access** to enforceable judgments justifying it by saying that their disclosure would violate the right to **privacy** of the parties. MANS lodged an appeal to the MoJ saying that judgments need to be public, and personal data may be deleted.

Afterwards, the MoJ rejected the first appeal on the account of silence of administration because the Court meanwhile passed the decision, and the appeal as per the decision restricting access is still pending before the MoJ.

Subsequently, the Basic Court in Ulcinj forwarded to us the MoJ's decision referring to the first appeal on the account of silence of administration, stating that it referred to the procedure related to declaring the judgments secret.

Since the MoJ never decided as per the appeals in which we contest the ruling of the Ulcinj-based court to denote enforceable judgments secret, we lodged a complaint with the Administrative Court. It is still pending.

The Basic Court failed to respond to the third application by MANS to make available the judgements passed from October to December 2010.

2.2. Other restrictions of access to court judgments

Basic Court in Nikšić

This Court responded to our first request for information by a document which did not even comply with the basic form stipulated in law, informing us that the procedure for access to enforceable judgments is **laid down in the Criminal Procedure Law**, not the FAI Law.

Following the appeal, the Basic Court in Nikšić passed a new decision, in the form stipulated which allowed access to information, but solely through **examination**, not making available copies thereof, as requested.

According to Article 4 paragraph 1 item 1 of the FAI Law, the right of access to information encompasses the right to ask for, receive, use and disseminate the information filed with government agencies, while the mere examination may not be shared with the interested persons, i.e. disseminated, thus substantially limiting the right to access information.

According to Article 1 paragraph 3 of the FAI Law, the right to access information is guaranteed at the level of principles and standards contained in international instruments on human rights and freedoms.

The Universal Declaration of Human Rights in its Article 19 guarantees that anyone shall have the right to "seek, receive and impart information". The International Covenant on Civil and Political Rights in its Article 19 guarantees to anyone the freedom to "seek, receive and

disseminate information”, and the European Convention on Human Rights and Fundamental Freedoms, in its Article 10, guarantees the freedom “to receive and communicate information”.

In its judgment¹⁸ the Supreme Court of Montenegro claimed:

„The primary obligation of an authority is to assess the possibility of exercising the right to access information in the manner requested. Particularly so given that the right to information encompasses the right to receive, use and impart information.”

MANS lodged an appeal with the MoJ, but it remained unanswered, and the complaint before the Administrative Court is still pending. The Basic Court in Nikšić failed to respond as per the second application, the same with the appeal to the MoJ, so we lodged a complaint with the Administrative Court which is still pending.

In response to our third application, the Court again allowed examination only.

Basic Court in Podgorica

The Basic Court in Podgorica, which has the greatest caseload and larger capacities than other courts, did not allow access to its judgments justifying it with **not being able to make reports as per types of offences or disputes for a certain period of time**.

Although the Podgorica-based Basic Court indubitably has the greatest capacities, both technical and human, compared to other Montenegrin courts, it was only this court which requested from MANS to correct the request by providing the data on the code signs of the cases requested or names of relevant parties to enable access to judgments.

MANS stated that it was unable to have available such details about judgments, since these were not publicly posted anywhere, so the Court rejected the application saying that the correction was not made as requested. This was upheld by the MoJ acting as per the appeal.

The Basic Court in Podgorica is the only Montenegrin court stating that:

“The PRIS (Judicial Information System) programme, used in the work of the Basic Court in Podgorica, does not enable reporting per type of offence or dispute for a given period of time”.

Interestingly, **no other court encountered problems finding the judgments**, although being much smaller, less equipped and **having started to use PRIS later than the Basic Court in Podgorica**.

Namely, the 2007 Judicial Reform Strategy says that “the implementation of the software solution PRIS is introduced as a pilot project in the Basic Court in Podgorica”. The same document continues:

“Within the first stage of implementation of the Judicial Information System (PRIS) in the first half of 2002 part of computer equipment was procured, a network built and users trained for the needs of the project. During that stage the computer equipment, the network and the training were provided for the following: ... Basic Court Podgorica...”

¹⁸ The Supreme Court judgment Uvp.br. 83/2006 as of 08 December 2006

In late 2010 MoJ states in its "Judicial Reform Brief":

„Judicial Information System (PRIS) is in place at all locations of PRIS users (MoJ, courts, State Prosecution and Institute for Execution of Criminal Sanctions), with a centralised and unique database and centrally installed applications accessible for users 24/7 in line with institutional set-up and authorities of user institutions.”

Moreover the Basic Court in Podgorica must have been able to identify judgments in corruption cases, given that it is **obliged to submit relevant statistics to the Supreme Court**, which compiles a report for all courts in Montenegro, as well as the Tripartite Commission.

Consequently, it is evident that the Basic Court in Podgorica was not willing to enable access to its judgments, and thus it misused the opportunity envisaged by law to ask for more detailed information of the application filed, although fully aware what the application referred to, as well as of the fact that the applicant was unable to provide any more detailed level of information than the one already stated in the original application.

The Basic Court in Podgorica requested the **correction of the second application as well**, and after MANS explained that we could not provide more detailed information, the Court failed to provide any response. The appeal before the MoJ is still pending, just like the complaint with the Administrative Court. In response to the most recent application, this Court **changed the case law and denied access** to judgments on the grounds that it is envisaged so in the Criminal Procedure Code and the Law on Courts.

Interestingly, some courts deny access to information justifying it by the violation to the **private lives of the parties** to the proceedings, while the Basic Court in Podgorica **requested** the names of parties in order to make the judgments available, and then changed the approach and “justified” the denied access to information by other reasons. It is, thus, evident, that the courts denying access to information only have very pronounced resistance to making their work public.

2.3. Changed case law

- **The Basic Court in Cetinje denied** access to judgements passed over the previous period, as upheld by the MoJ in acting as per the appeal.

The same Court **granted** access to judgments as per the second application, but solely through direct inspection. The MoJ accepted the appeal of MANS and quashed the decision of the Basic Court in Cetinje. After that, the Court **provided us with the copies of judgments**.

The Court responded to the request referring to the third period stating that it would make the judgments available, but failed to do so.

- **The Basic Court in Bijelo Polje made us available copies of parts of judgments**, i.e. just the introduction and recitals, no rationale.

Deciding as per the second application, this Court denoted the enforceable judgments **secret** for the purpose of protecting the privacy of the parties to the proceedings. However, the documents made available by the same court as per the first application contain also the data of persons involved in the proceedings. The MoJ upheld the decision of this Court, and the complaint before the Administrative Court is still pending.

The Bijelo Polje Court denied access even as per the third application.

- **The Basic Court in Berane provided us with copies of judgments**, acting as per the first application.

In response to the second application, the same Court allowed access to judgments, informing us we would be provided with copies of requested documents as soon as we had paid the **costs of the proceedings** and stating that the decision on the amount of costs would be delivered subsequently. It never was, but instead the Court issued another decision allowing **inspection** of judgments only. MANS lodged an appeal still pending with the MoJ. This Court **did not respond** to the third application.

3. STATISTICS ON JUDGMENTS FOR CORRUPTION

This Chapter gives an overview of statistical data gathered from 155 first instance and 37 second instance judgments in corruption cases pronounced over the period between 2006 and 2010¹⁹.

Basic courts most frequently passed judgments in cases referring to abuse of office, while high courts most frequently decided in active and passive bribery cases.

Since the formation of specialised departments with high courts and the introduction of the obligation for courts to submit records to the Tripartite Commission, there is an evident increase in the number of proceedings for corruption cases, especially passive bribery for which previously there were no cases handled by basic courts.

Over 90 persons out of over 200 accused were convicted. Basic courts passed over 40% of acquittals, while high courts, acting in the first instance, passed almost two thirds of convictions. There is also an evident difference in the penal policy, with basic courts mostly pronouncing suspended, and high courts imprisonment sentences.

There is a large number of dismissals - every fifth basic court judgment, and every third high court judgment. Almost all dismissals were pronounced on the account of prosecutors dropping the charges.

Table 2 gives an overview of data available by courts.

First instance court	Number of proceedings / judgments	Number of accused	Number of corruption offences
Basic Court Herceg Novi	2	2	2
Basic Court Kolašin	10	13	13
Basic Court Plav	5	5	5
Basic Court Rožaje	16	20	16
Basic Court Žabljak	11	19	21
Basic Court Danilovgrad	1	1	1
Basic Court Pljevlja	8	9	9
Basic Court Berane	26	31	30
Basic Court Bijelo Polje	40	54	71
Basic Court Cetinje	3	3	3
Basic Court Nikšić	Denied access to all judgments		
Basic Court Bar			
Basic Court Kotor			
Basic Court Ulcinj			
Basic Court Podgorica			
<i>Basic Courts</i>	122	157	171
High Court Podgorica	21	33	30
High Court Bijelo Polje	12	18	24
<i>High Courts</i>	33	51	54
Total	155	208	225

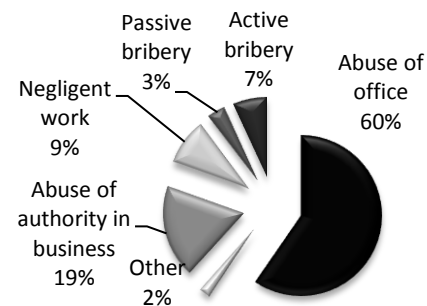
Table 2: Number of available first instance judgments, the accused and offences (2006-2010)

¹⁹ Some courts made available the judgments which did not refer to corruption, and thus were not included in this review. Ten basic courts made available in total 134 judgments, 122 out of which referred to corruption cases. We also reviewed 33 first instance judgments of high courts. In addition, we reviewed also 37 second instance judgments of the Appellate Courts and High Courts, available on their websites.

3.1. Indictments

Over the five year period in 155 first instance cases the total of 208 persons were charged with 225 corruption offences.

In almost two thirds of cases persons were charged with the abuse of office (134 offences), abuse of authority in business (42) and negligent performance of duties (21), then active bribery (15) and passive bribery (8).

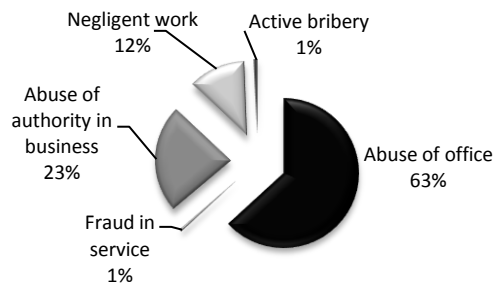


Graph2: Corruption offences - first instance courts (2006-2010)

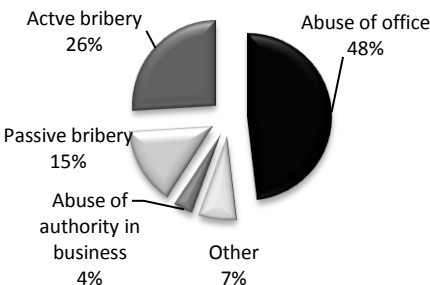
Other offences include falsifying official documents (2 offences), and one each fraud in office, causing false bankruptcy and false balance.

First instance court	Abuse of office	Abuse of auth. in business	Negligence	Passive bribery	Active bribery	Other
BC H.Novi			1			1 ²⁰
BC Kolašin	11		2			
BC Plav	3	1	1			
BC Rožaje		9				
BC Žabljak	19		1			
BC Danilovg						
BC Pljevlja	8		1			
BC Berane	15	13	2			
BC B.Polje	44	13	3			
BC Cetinje	1	2				
Total BC	108	40	21	0	1	1
High Court PG	12	2				1 ²¹
High court BP	14			2	5	3 ²²
High courts	26	2	0		14	4
Total first inst.	134	42	21	8	15	5

Table 3: Number of offences for which first instance judgments were passed (2006-2010)



Graph 3: Basic courts
- first instance proceedings - corruption offences (2006-2010)

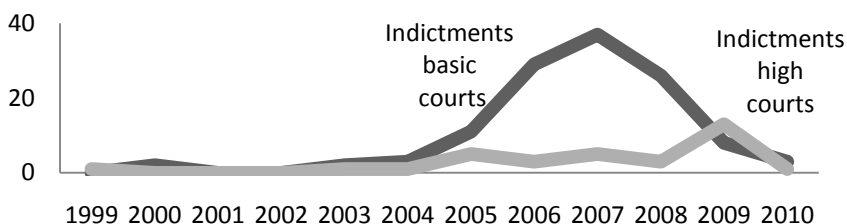


Graph 4: High courts
- first instance proceedings - corruption offences (2006-2010)

²⁰ Fraud in service
²¹ False balance
²² Two forged official documents and one causing of false bankruptcy

Basic courts did not hear passive bribery cases which were quite frequently decided by high courts. There are also considerable differences in frequency of active bribery cases, where indictments were mostly filed with high courts, most frequently in 2009. It is noteworthy that a negligible percentage of cases is based on evidence obtained through covert surveillance, thus it would be wrong to conclude that extended authorities of the police and the prosecution led to the increased number of charges.

Most of the indictments based on which basic courts adjudicated in corruption cases over the last five years were filed in 2007, while in the case of high courts it was in 2009.



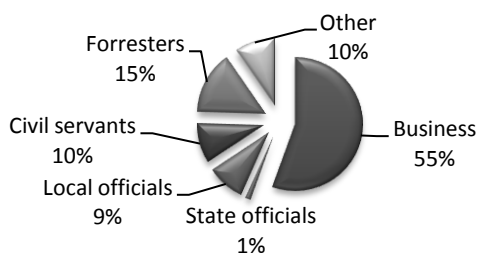
Graph 5: Years when charges were brought as per which basic and high courts passed judgments over the period 2006-2010

Incidentally, high courts received jurisdiction for corruption cases in the first instance with the adoption of the Law amending the Law on Courts²³ stipulating that a specialised department was to start operating not later than on 01 September 2008.

As already noted, the Tripartite Commission was set up in 2007, and since 05 June 2009 all courts are supposed to set up and maintain separate records of organised crime and corruption cases in order to have available detailed information on such cases to be furnished to the Tripartite Commission which is in charge of compiling such data.

Thus, since the establishment of specialised departments for organised crime, corruption, terrorism and war crimes within high courts and imposing the obligation on courts to maintain records on corruption cases to be furnished to the Tripartite Commission, there is an evident increase in the number of corruption cases, particularly passive bribery, for which there were no prior cases heard before basic courts.

Given that these new cases involved the so-called petty corruption, as covered in detail in Chapter 4 herein, the question arises whether the increased activity of courts was caused by the mere intention to have more appealing anticorruption statistics or it is a reflection of the actual realities and genuine will to curb this type of crime.



Graph 6: Number of proceedings by accused, all courts (2006-2010)

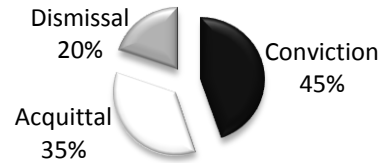
Every other case involved business people, and in absolute numbers there were more proceedings against foresters than both the local and the state officials put together.

²³ Official Gazette of the Republic of Montenegro 49/2004 of 22 July 2008

3.2. First instance judgments

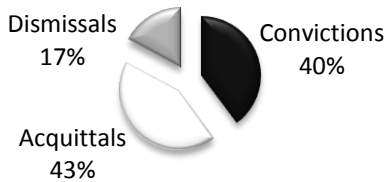
There were 72 convictions, 57 acquittals, and 32 dismissals²⁴.

In first instance proceedings 92 persons were convicted of corruption, 77 acquitted, and for 43 persons charges were dismissed.



Graph 7: First instance judgments - by cases (2006-2010)

Basic courts had a much larger number of acquittals as compared to the high ones which had two thirds of convictions.

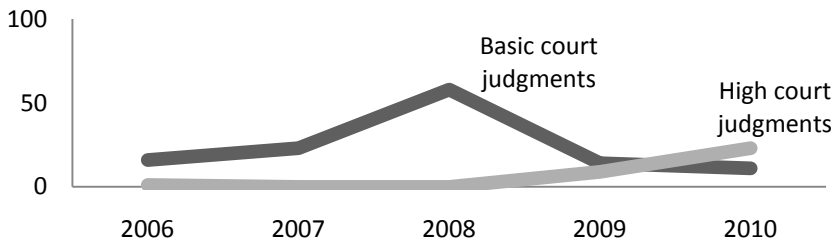


Graph 8: Basic courts judgments - by cases (2006-2010)



Graph 9: High courts judgments - by cases (2006-2010)

While basic courts passed most of the judgments in corruption cases in 2008, in the case of high courts it was in 2010.



Graph 10: Judgments in corruption cases by year - basic and high courts (2006-2010)

Interestingly, basic courts passed the largest number of judgments in corruption cases in 2008 when the Law on Courts was amended assigning jurisdiction for corruption cases in the first instance to high courts.

Incidentally, such amendments stipulate that corruption cases received until the beginning of operation of the specialised department will be closed by courts which held jurisdiction as per prior legislation²⁵ and that such cases would be transferred to high courts if, after the entry into force of these amendments, the first instance decision happen to be quashed by the high court.²⁶

This raises the question of the reason behind such diligence of the basic courts in deciding in corruption cases immediately before the relevant jurisdiction in the first instance was transferred to high courts. Namely, the basic courts were obliged to close the cases they started, but apparently were in a hurry to pass as many judgments as possible.

²⁴There are several mixed judgments, acquitting some defendants and convicting others etc

²⁵ Article 35 paragraph 2 of the 2008 Law amending the Law on Courts

²⁶ Article 35 paragraph 2 of the 2008 Law amending the Law on Courts

Such basic court judgments enter official court statistics as judgments for corruption cases. Then the appeal cases were heard before high courts, as the second instance ones, which is again featured in court statistics referring to high courts as second instance ones. However, **many basic court judgments were quashed by high courts, transferring cases to their specialised departments which then passed new judgments in the first instance.**

Thus, high courts passed first instance judgments in cases in which they first passed second instance judgments. Naturally, even such first instance judgments were included in court statistics in the section on the caseload of high courts acting in the first instance. Some of the cases were decided, as per appeals, at the Court of Appeals of Montenegro, and such decisions are also included in the court statistics.

Consequently, this manifest diligence of basic courts in corruption cases in 2008 may be interpreted as an attempt to embellish anticorruption statistics, which was the most prominent outcome of such diligence, as confirmed by the review presented below.

3.2.1. Convictions

The ten basic courts passed 51 convictions involving 63 persons for 61 offences, and the two high courts passed 21 convictions for 29 persons who committed 29 corruption offences.

First instance courts	No of judgments	No of convicts	No of offences	Total damages awarded
Basic Court Herceg Novi	2	2	2	-
Basic Court Kolašin	4	4	4	-
Basic Court Plav	3	3	3	335.00
Basic Court Rožaje	13	15	13	37,337.00
Basic Court Žabljak	5	10	9	18,200.00
Basic Court Danilovgrad	1	1	1	1,528.00
Basic Court Pljevlja	1	1	1	-
Basic Court Berane	8	9	9	-
Basic Court Bijelo Polje	13	17	18	14,146.00
Basic Court Cetinje	1	1	1	-
Basic Courts	51	63	61	71,546.00
High Court in Podgorica	13	20	20	52,963.00
High Court in Bijelo Polje	8	9	9	27,905.00
High Courts	21	29	29	80,868.00
Total first instance	72	92	90	152,414.00

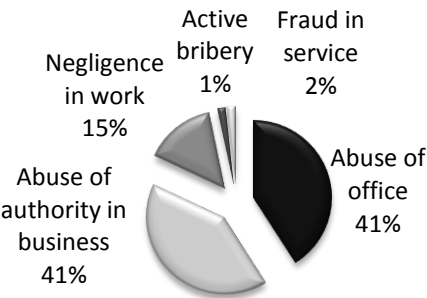
Table 4: First instance judgments - convictions (2006-2010)

Offences

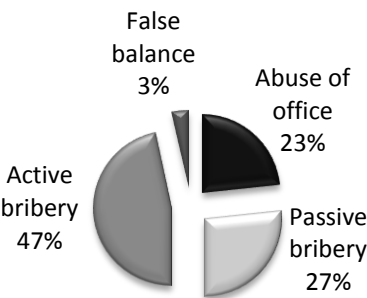
Most of the convictions pronounced by basic courts referred to abuse of authority in business, while high courts have no convictions for this offence.

The 2008 amendments to the Law on Courts assigned jurisdiction for corruption cases in the first instance to high courts, but only if punishable by eight years or more of imprisonment²⁷, or for the graver forms of this offence when the gains exceed the value of 40,000 euro.²⁸ Therefore, the fact that **high courts have no convictions for abuse of authority in business contributes to the conclusion that courts hear only petty corruption cases leading to gains under 40,000 euro.**

Three out of four convictions pronounced by high courts refer to active and passive bribery, while basic courts passed only one such judgment.

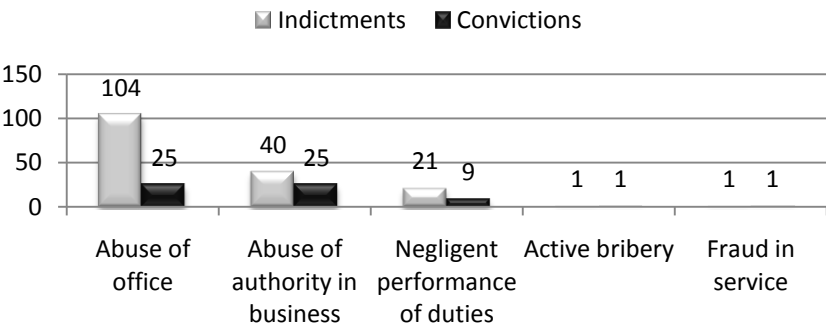


Graph 11: Basic courts - convictions - by offences (2006-2010)



Graph 12: High courts - convictions - by offences (2006-2010)

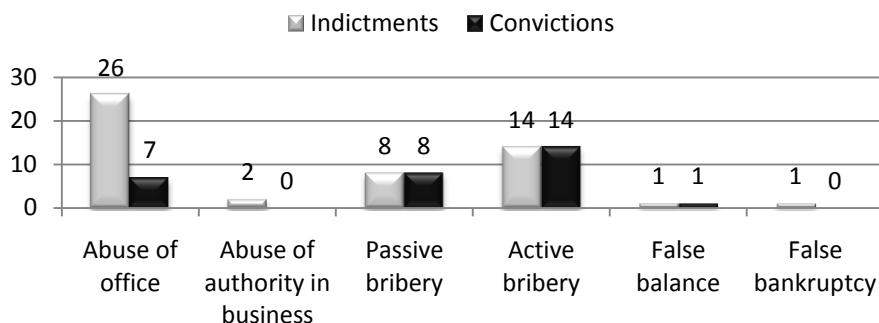
Basic courts convicted every third accused of abuse of office, almost two thirds of those charged with the abuse of authority in business, and half of those charged with negligent performance of duties, while one accused each for active bribery and fraud in service.



Graph 13: Basic courts - number of indictments and convictions (2006-2010)

High courts convicted every third person charged with abuse of office, but also **every person charged with active and passive bribery**. No person charged with abuse of authority in business was convicted.

²⁷ Article 5 of the Law amending the 2008 Law on Courts
²⁸ Article 276 paragraph 2 of the Criminal Code



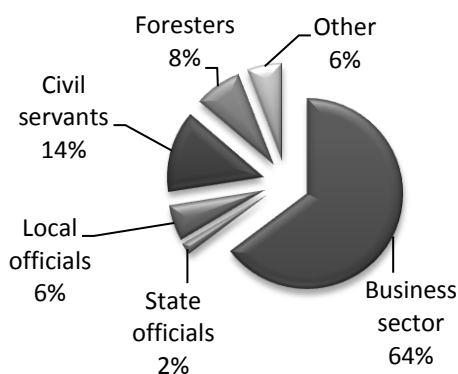
Graph14: High courts - number of indictments and convictions by offence (2006-2010)

Persons

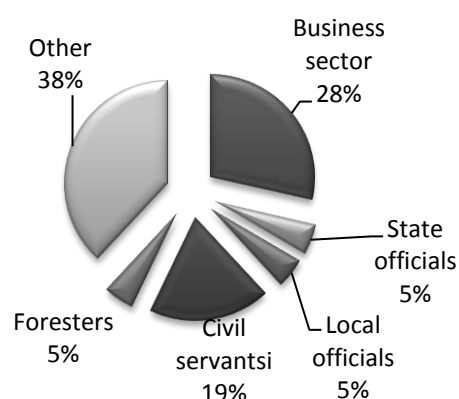
In most of the cases, basic courts convicted businesspeople for corruption, and then civil servants. Almost one in ten is a forester, and there is a negligible percentage of cases involving public officials, particularly at the state level.

First instance courts pronounced only **two convictions for judges and eight for local officials**.

High courts more frequently convicted drivers, pensioners, school principals and other private citizens than any other category. Every third convicted person comes from the business sector, and almost one in five is a civil servant. There are few convicted officials.



Graph 15: Basic courts - Number of proceedings per different types of convicted persons (2006-2010)

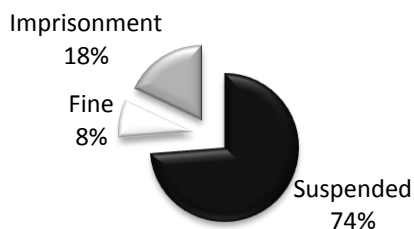


Graph 16: High courts - Number of proceedings per different types of convicted persons (2006-2010)

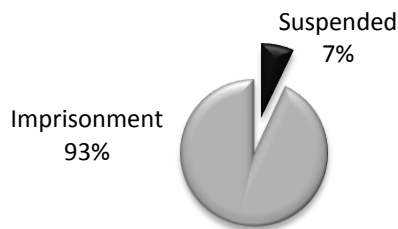
Punishments

While basic courts mostly pronounce suspended sentences for corruption, almost every conviction pronounced by high courts involved imprisonment.

Basic courts pronounced imprisonment sentence for **11 persons of the overall duration** of some 65 months or somewhat over **five years of imprisonment**. High courts pronounced imprisonment sentences for **27 persons of total duration** of almost 330 months or some **27 years**.



Graph 17: Basic courts - Punishments pronounced (by persons)(2006-2010)



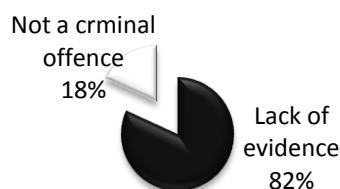
Graph 18: High courts -Punishments pronounced (by persons)(2006-2010)

Basic courts replaced total pronounced prison sentence of 247 months or some 20 years with 66 years of suspended sentence. They pronounced the total of 6,400.00 euro in fines, while high courts did not pronounce such punishments.

3.2.2. Acquittals

Basic courts passed 55 acquittals for 73 persons and 83 offences, and high courts two acquittals for four persons and two offences.

Most of acquittals were passed due to lack of evidence that the criminal offence the accused was charged with was committed at all.



Graph 19: Reasons for acquittals

3.2.3. Dismissals

Almost one in five basic court judgments are dismissals, and almost one in three for high courts.

Basic courts passed 22 dismissals for 26 persons and 27 offences. High courts passed 10 dismissals for 17 persons and 20 offences.

In almost 90% of cases, the reason for dismissals was prosecutors dropping the charges. In some cases prosecutors did so after proceedings took already several years. One of such cases lasted over 11 years.

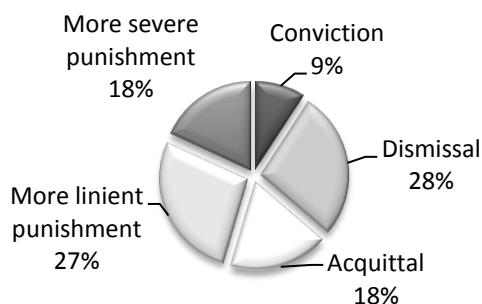
3.3. Second instance judgments

MANS was made available 37 second instance judgments for 51 persons and 47 corruption offences, 16 of which referred to abuse of office, five to abuse of authority in business, six to negligent performance of duties, eight to passive and nine to active bribery, one false balance and two forged official documents.

On average, second instance proceedings lasted some eight months, the shortest being completed in two months, the longest took almost a year and a half. While in the Appellate and the High Court in Bijelo Polje second instance proceedings lasted on average 6 months, in High Court in Podgorica they took over 10 months on average.

The defendant appealed in 16 proceedings, in 4 cases both the prosecutor and the defendant appealed.

One in two second instance judgments rejects the appeal, both of the defendant and the prosecutor.



Graph 20: Result of reversing the first instance judgments (all second instance courts)

One in three second instance judgments reverse the first instance judgment, mostly as per the appeals of defendants.

Over 70% of judgments reversing the first instance judgment are to the benefit of the defendants.

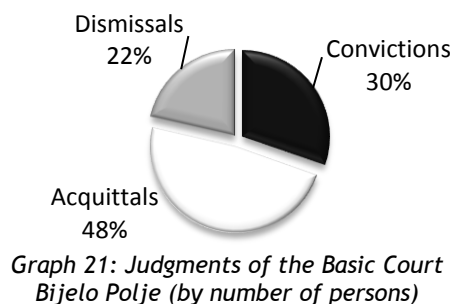
One in five second instance judgments quashes the first instance judgment, mostly as per the appeal of the prosecutor, and the case is sent for retrial.

3.4. Data by courts

3.4.1. First instance courts

Basic Court Bijelo Polje

This court made us available only parts of judgments, just recitals without the rationale. In 40 cases²⁹ the total of 54 persons were charged with 71 corruption offences, as follows: 44 abuses of office, 13 abuses of authority in business, 13 negligent performance of duties and one active bribery. The accused included one judge, two local officials and 6 civil servants.



Graph 21: Judgments of the Basic Court Bijelo Polje (by number of persons)

These proceedings lasted in total 636 months or 53 years, or since raising the indictment to final judgment it took on average almost 16 months. The longest proceeding took 90 months.

In total, 13 convictions were passed for 17 persons charged with 18 offences. Eight persons were pronounced suspended sentences, three fines and six prison sentences.

One judge and one court clerk, as well as a court registrar were convicted of several offences and pronounced prison sentences.

The members of the Board of Directors of two companies were pronounced 3-month prison sentences each, one for unauthorised purchase of a vehicle at the cost of the company, and one for not paying over 30,000 euro of taxes.

In an unusually short proceeding, which took only five days, a foreign national who attempted bribing a police officer with 40 euro was pronounced a 45 day prison sentence.

The most severe suspended sentence, six month imprisonment or two years suspended sentence was pronounced to a forester who collected lesser fee causing damages to the budget in the amount of 532 euro.

²⁹ The Court furnished us with 41 cases, but only 40 referred to corruption

A bankruptcy receiver who paid out the money collected through claims to the employees without paying taxes and contributions which amounted to over 40,000 euro was convicted to three months in prison or 3 years suspended sentence. Interestingly, the state did not claim the damages.

Four persons were convicted with three month prison sentence or one year suspended sentence each for avoiding paying taxes in the amount of 1,056 euro, 4,820 euro, 6,101 euro and 10,183 euro, respectively.

An owner of a private company was convicted somewhat more severely for a much smaller amount, three months in prison or two years suspended sentence for avoiding paying VAT and excise tax for 220 boxes of Marlboro and 109 boxes of Drina of total value of 133 euro.

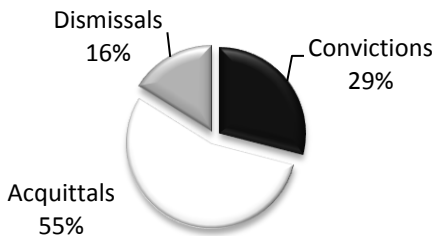
In the proceeding which lasted 26 months, three local civil servants were pronounced fines for not listening to the party in the administrative proceeding and having evicted a person from an apartment.

The total of 20 judgments were pronounced acquitting 27 persons for 40 offences. Out of these, only the cases against eight foresters who failed to protect woods from illicit felling lasted in total 128 months. The longest proceeding which ended in an acquittal lasted 90 months and referred to an offence from 1994, then a 35-month long proceeding against a forester for whom it turned out that in 2002 he unlawfully marked 16 logs.

There were **10 dismissals involving 12 persons and 13 offences.** One of these proceedings which ended in dropping of charges lasted two years against a person charged with not having paid taxes in the amount of some 5.500 euro.

Basic Court Berane

In 26 cases³⁰ the total of 31 persons were charged with 30 offences including 15 abuses of office, 13 abuses of authority in business, and two negligent performances of duties. The accused included two local officials and two civil servants.



These proceedings lasted in total 320 months or almost 27 years, i.e. **on average 12 months** from raising the indictment till the pronouncement of judgment. The longest proceeding took 72 months.

The total of eight convictions for nine persons and nine offences were pronounced. The Court did not award compensation for damages in any of the cases.

Graph 22: Judgments of the Basic Court Berane (by number of persons)

Six owners of private companies, one adviser with the Water Management Secretariat and one forester were convicted, all to suspended sentences.

The most severe punishment was pronounced to a company director who avoided paying VAT, excise tax and customs for 65 bottles of alcohol and 10 boxes of cigarettes, six months in prison or one year suspended sentence.

³⁰ The Court made us available 33 cases, but only 26 involved corruption, while others referred to theft, domestic violence, illicit hunting, etc.

Four months in prison or one year suspended sentence was pronounced to a businessman for failing to pay VAT on timber in the amount of some 28 euro.

On the account of unpaid taxes on timber in the amounts of 106 and 37 euro respectively, two persons were punished with three months in prison or one year suspended sentence.

Other convictions also included three months in prison or one year suspended sentence to the adviser in the Water Management Secretariat for non-issuance of water certificate, and two members of Board of Directors who failed to pay taxes on remuneration for the work in boards in the total amount of 425 euro over the period between 1999 and 2002. The same punishment was pronounced to a private business owner who failed to pay VAT and did not report imported goods from Serbia: insecticides, bean, beet root and celery seeds...

The same punishment was pronounced to a forester against whom a proceeding lasted 72 months or six years and it was proven that in 1995 he did not pay for logs, or the sales tax, thus causing the damages of 13.365 dinars, but there were no claims for compensation for damages.

The total of 15 judgments were pronounced acquitting 17 persons of charges for 17 offences. The longest such proceeding took 42 months against a private business owner for failing to pay 34.87 euro worth of taxes on timber in 2002.

Three dismissals were pronounced involving 5 persons and 5 offences. In February 2008, a 30-month proceeding ended in dismissal on the account of absolute statute of limitation. It was caused by changes to the Criminal Code which is more lenient for the defendants and envisages the statute of limitation for offence they were prosecuted for since mid 2006. In other two cases the prosecutor dropped the charges for failure to pay taxes on timber in the amounts of 19, and 34 euro, respectively, 14, and 4 months after raising the indictments.

Basic Court Cetinje

In three proceedings three persons are charged with three offences, one being abuse of office, and two abuse of authority in business. The accused involved two local officials.

All the proceedings before this court took in total 59 months, and **average length of proceeding was 19.5 months**.

Over five months there was **one conviction for one person** and one offence and one suspended sentence pronounced³¹.

There was one acquittal pronounced for one person and one offence in the proceeding that took 42 months against the former mayor for the abuse of office regarding dismissal of one employee.

One dismissal involved one person and one offence, and was pronounced on the account of absolute statute of limitation in the proceeding that lasted 12 months for the offence perpetrated in 1996.

Basic Court Danilovgrad

This Court heard only **one corruption case**, abuse of authority in business, against one private business owner. **A conviction came 58 months** after raising the indictment **with 4-month prison sentence for corruption**, and estimated damage was 1.528 euro on the account of unpaid taxes and contributions.

³¹ For corruption offence the three month prison sentence was pronounced, and the unified sentence, for that and another non-corruption offence is 13 months in prison or 2 year suspended sentence

Basic Court Herceg Novi

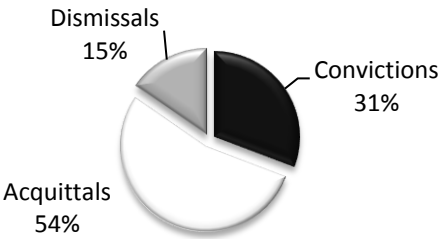
This court made us available 6 judgments, but only **2 concerned corruption cases against two persons** on the charges of negligent performance of duties and fraud³². Both are **convictions**, with suspended sentences.

In one case a police officer was convicted of three months in prison or one year suspended sentences for having stated of being attacked by a person, then concluding he had been wrong in the proceeding against that person³³.

In the second case, 14 months after raising the indictment, a captain of the warship in the Army of Serbia and Montenegro failed to inform his superiors in writing that he was granted official housing and continued receiving a separate living allowance in the total amount of 3.137 euro.

Basic Court Kolašin

In ten cases 13 persons were charged for 11 offences of abuse in office and 2 negligent performances of duties. The accused involved four civil servants, but no local officials.



The proceedings lasted in total 125 months, or **on average somewhat over a year** from raising the indictment to passing judgment.

Four convictions were pronounced against 4 persons for 4 offences, two of which were abuses of office and two negligent performance of duties. Three suspended sentences and one monetary fine were pronounced.

Graph 23: Judgments of the Basic Court Kolašin (by number of persons)

Both convictions involve the same person. In the first case he was convicted of the abuse of office concerning unlawful entry of two persons into the civil register for which he was convicted to three-month imprisonment or one year suspended sentence. The offence was repeated, now involving unlawful registration of five persons, and this time he was convicted to the lowest sanction possible, a 1,200 euro fine.

Other two convictions refer to post office cashiers convicted to three, and six month imprisonment, respectively, or one year suspended sentence for negligent performance of duties - they failed to comply with the decision of the maximum cash allowable of 300 euro, leading to unknown perpetrators having robbed the post office and taken larger amounts than that. One of these proceedings took over two years.

Four judgments were pronounced acquitting 7 persons for the lack of evidence of having committed 7 offences prosecution charged them with. Interestingly, the proceedings leading to acquittals lasted almost 18 months, more than **twice the length of proceedings leading to convictions**, which lasted some 8 months.

Two dismissals were pronounced for two persons and two offences on the account of the prosecutor dropping the charges. In one case it happened after 3 months, and in another it took the prosecutor 11 months to decide so.

³² Other cases mostly referred to embezzlement
³³ It is not known how long this proceeding lasted because of the deletions done by the court before making available the said judgment to MANS.

Basic Court Plav

In five cases five persons were charged with five offences, three being abuse of office, one the abuse of authority in business, and one negligent performance of duties.

The proceedings lasted in total 68 months, or **on average over 13.5 months** from raising the indictments to passing judgment. The longest proceeding was the one in which the prosecutor dropped the charges after 39 months.

Three persons were pronounced guilty in three judgments for three offences and convicted to suspended sentences of 3 or 4 months in prison or one year suspended sentence. Total damages caused by these offences were established at 335 euro.

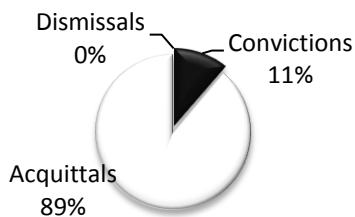
A director of a company was convicted for having violated the right to pension and social insurance to his employees in the amount of 156 euro and refused to hand them their employment cards, while another director of a company was convicted for attempting to sell 35 boxes of cigarettes without the excise stamps and 360 pieces of edible eggs without paying VAT and excise of the unknown amount.

The third convicted person was a forester who did not report unlawful felling, but took the logs for himself thus acquiring the gain of 179 euro.

There is also one acquittal and one dismissal including one person and one offence each.

Basic Court Pljevlja

In eight cases nine persons were charged with nine corruption offences, **eight of them abuse of office and one negligent performance of duties**. The accused included four officials and two civil servants.



The proceedings lasted in total 58 months, or **on average somewhat over seven months** from raising the indictment to pronouncing judgment.

One person was convicted to four months in prison for this offence³⁴.

Graph 24: Judgments of the Basic Court Pljevlja (by number of persons)

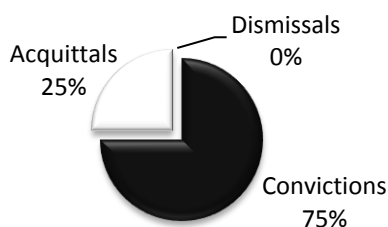
The proceeding ending in a conviction to 9-month imprisonment referred to a **mechanical technician in the TPP Pljevlja** who abused office and procured gains for himself and others in the amount of some 11,000 euro, the value of one lorry full of heavy oil he failed to record.

There were 7 acquittals for 8 persons and 7 offences. There were no dismissals.

³⁴ 4 months for abuse, and 3 for forgery, single sentence is 6 month imprisonment

Basic Court Rožaje

In 16 cases 20 persons were charged with 16 corruption offences, seven being abuse of office and nine abuse of authority in business. The accused included eight civil servants, but no officials.



Graph 25: Judgments of the Basic Court Rožaje (by number of persons)

These proceedings lasted in total 145 months, or on average **nine months** from raising the indictments to passing judgment. The longest proceeding lasted 45 months.

The total of 13 convictions were pronounced for 15 persons, involving 3 imprisonment and 12 suspended sentences for five abuses of office and eight abuses of authority in business.

One six-month prison sentence was pronounced on the account of abuse of office to a director who sold the business premises owned by the company for almost 35,000 euro and kept the money for himself.

Another 3-month prison sentence was pronounced after almost 4 years of trial to the executive director of the AD Turjak for failing to pay in 2002 and 2003 taxes and contributions to salaries of staff amounting to some 23,000 euro, qualified as abuse of authority in business.

The third prison sentence of 30 days was pronounced to a private company owner who failed to pay VAT and excise tax for 25 boxes of cigarettes and 3 litres of whiskey.

Four civil servants were convicted, among which three members of the army, with six months or one year suspended sentence each for abuse of office when they arbitrarily drilled and blew up rocks thus acquiring personal gain of 220 euro. The fourth among them was a local civil servant in Rožaje, and was punished as a responsible person in a private company who abused authority in business by not paying taxes and customs duties for 150 pairs of jeans he imported. He was convicted to 3 months in prison or one year suspended sentence.

The six months in prison or one year suspended sentence was pronounced to the president of the association of pensioners for taking the Pension and Disability Fund money and the donation amounting to 2,893 euro, the director of "Ibarmond" who concluded an agreement on fiduciary transfer of titles over land as a security for a short-term loan, which exceeded for 3,000 euro the value of the loan, as well as the owner of the company who, without the knowledge of other members of the Executive Board and share holders, used company assets as a security for a long-term credit.

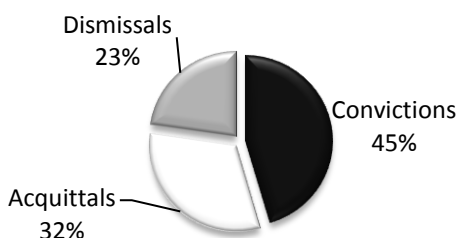
Lesser punishment, 3 months in prison or a year of suspended sentence was pronounced to a company owner who annulled fiscal accounts thus denying the VAT revenues to the budget in the amount of 974 euro, the owner of a company who smuggled car sparking plugs, horns and air filters, thus not paying customs duties and tax in the amount of 476 euro, and a craftsman who smuggled 85 pairs of shoes and 74 rugs, not paying the 221 euro worth of taxes.

The last punishment of one month in prison or one year suspended sentence was pronounced to a shoemaker who smuggled 54 pairs of female shoes thus denying the 275 euro worth of tax revenues, who was actually arrested and spent six days in detention.

Three judgments were pronounced acquitting five persons on the account of lack of evidence for three corruption offences they were charged with.

Basic Court in Zabljak

In 11 cases 19 persons were charged with 21 offences including 19 instances of abuse of office, one abuse of authority in business, one negligent performance of duties. The accused included 11 local officials and 5 civil servants.



Graph 26: Judgments of the Basic Court Zabljak (by number of persons)

The proceedings lasted 115 months in total, or on average over 10 months from raising the indictment to passing judgment. The cases where prosecutors dismissed charges lasted the longest, on average over 15 months.

Five convictions were pronounced involving 10 persons and nine offences. All sentences are suspended.

Thus, the local officials who caused damages to the budget of over 90,000 euro for buildable land deals were convicted to 14 to 16 months in prison or three years suspended sentence.

On the other hand, an expert assistant and a guard in the National Park were convicted to 6 and 12 month imprisonment for marking healthy trees for felling and selling it at retail prices not entered into the books, thus causing damages of 1,484 euro.

A six-month imprisonment or two year suspended sentence were pronounced to the speaker of the local parliament in Šavnik for unlawful granting of a housing loan, and a receiver who was paying business travel allowances and bought equipment at higher prices, but the total amount of damages thus caused is not known. Interestingly, in a 34 month long proceeding against the speaker of the local parliament the municipality did not request any compensation for damages saying that they received more money from the ministry, while the court took the fact that he was a public official as an extenuating circumstance.

The secretary of the Šavnik-based school was convicted to three months in prison or two years suspended sentence for not charging loan instalments to the salaries of staff.

Four judgments were passed acquitting 7 persons for 7 offences. One of the proceedings lasted 29 months against a person that the prosecution brought charges against as early as in 1999 for having sold some company assets without public offer, thus causing damages of DEM 3,400, plus took additional 205 euro.

Five judgments were made dismissing charges against five persons for five offences on the account of the prosecutor dropping the charges. One proceeding lasted as many as 34 months, and on average they lasted 15 months, longer than in cases ending in convictions and acquittals.

High Court in Bijelo Polje (acting in the first instance)

MANS was provided with 12 first instance judgments of the High Court in Bijelo Polje against 18 persons on the account of 14 offences of abuse of office, two passive bribery, five active bribery, two forged official documents, and one false bankruptcy. None of the judgments involved public officials, while in three cases civil servants were charged - two traffic wardens and one bankruptcy receiver.

The shortest proceeding was completed in the matter of several days, and the longest lasted almost five years. The average length of proceedings was 16.5 months, the total duration of all proceedings we have data on was 199 months or somewhat over 16 years.

Eight convictions were pronounced against nine persons for nine offences. The shortest proceedings lasted only several days, and the longest 46 months - against a forester.

In two cases with charges for the abuse of office two persons were convicted - a director of a cooperative and the above mentioned forester - to imprisonment of four months and 45 days respectively. While the director is obliged to pay compensation for damages to the cooperative amounting to close to 25,000 euro, the forester is obliged to pay the Forestry Directorate some 3,000 euro. The two proceedings are at the same time the only ones with adjudicated compensation for damages of corruption offences.

There are two convictions for passive bribery by which two traffic wardens were sentenced to a year and two years in prison for the amounts of 20 and 200 euro, respectively, while one person was sentenced to six months in prison for offering bribe to a police officer.

Five persons were convicted for active bribery, two of them drivers, one pensioner, while the occupation of others is not known. They are all sentenced to imprisonment, ranging from four to seven months, for offered bribe in the amount of 5 euro in one case, 10 euro in another, 50 euro each in two cases, and 200 euro in the remaining case.

There were also four dismissals on the account of prosecutors dropping the charges against nine persons that were originally charged with 12 offences of abuse of office and one false bankruptcy. These proceedings lasted in total over 11 years, and the prosecutors dropped the charges on average some three years after the indictments were raised.

High Court in Podgorica (acting in the first instance)

This statistical review was done based on **21 enforceable judgments made available to MANS against 33 persons on the account of 12 offences of abuse of office, 2 abuse of authority in business, 6 passive bribery and 9 active bribery, as well as one offence of presenting false balance.**

One of the judgments refers to a Bijelo Polje High Court judge, one to the former mayor of Herceg Novi, and in three cases the accused were civil servants - two customs officers, one civil engineering inspector, and a head of the local office of the Real Estate Directorate.

The shortest proceeding was completed in two months, and the longest lasted 11 years which ended in dismissal of charges. **The average length of proceedings is 35 months or almost three years**, and the total duration of all proceedings made available to us is almost 730 months or over 60 years.

There were 13 convictions involving 20 persons for 20 offences. The shortest proceeding lasted two, and the longest 72 months - against a director of a craftsman's shop. In 2010, almost five years after the indictments were raised, the cases related to offering 330 DEM as bribe in 2003 and 55 euro bribe offered in 2004 were closed.

In 5 cases which referred to the abuse of office 4 persons were convicted³⁵:

A former mayor was convicted to six months in prison for having concluded a deal with a lawyer to sue flat owners who were in default of building maintenance fee payment at a

³⁵ One of the persons charged with that offence was eventually convicted of another having nothing to do with corruption.

rate exceeding the one envisaged by the Lawyer Tariffs, although the same could have been done by the municipal legal department, and obliged the municipality to pay 147,225 euro to the lawyer.

The director who drew money from his company's account as 34,463 euro worth of material expenses which were not recorded in books nor did he have the receipts for was convicted to 6-month imprisonment. This is at the same time the only case for which this Court obliged the convict of paying the damages and set the amount thereof.

The director of a craftsman's workshop who in 2003 paid larger bills to another company than the actual ones causing the damages to his firm of 17,843 euro was convicted in 2010 to three months in prison.

A school principal was convicted to a suspended sentence for failing to procure the School Board an agreement in 2002 and 2003 to rent school premises for the total of 3,000 euro, the contracts were not entered in records, and did not envisage the renter to pay the electricity and water bills.

People convicted of the abuse of office were charged by the prosecution of having caused damages in the amount of over 200,000 euro. However, the court judgments awarded the amount almost six times lower or 34,463 euro in one proceeding only.

There were no convictions for abuse of authority in business.

Six persons were convicted to prison sentences for six offences of active bribery. One judge of the Bijelo Polje High Court was convicted to seven year imprisonment, and the three persons who assisted him in taking the 15,000 euro bribe, whose occupation could not have been discerned from the judgments, to three years for two persons each and one person to two years in prison. One custom officer was convicted to one year imprisonment and one civil engineering inspector to five month imprisonment.

Eight judgments were passed convicting nine persons for active bribery, all to prison sentences. One person was convicted to a year of imprisonment, two persons seven months each, two persons four months each, three persons three months each, and one person two months.

Two judgments were passed acquitting four persons from the private sector charged with abuse of office and abuse of authority in business. Two persons were acquitted on the account of the amendments to the Criminal Code, because the court was of the opinion, after more than seven years from raising the indictment, that the actions of these persons did not constitute an offence any more.

There were also six dismissals for eight persons and six offences of abuse of office and one abuse of authority in business. In five cases the prosecutor dropped the charges, and in one case it was decided that the actions the accused were charged with did not constitute a criminal offence.

On average, proceedings ending in dismissals lasted more than four years, and all six proceedings lasted in total over 24 years. The shortest proceeding ending in a dismissal lasted eight months, and the longest more than 11 years.

3.4.2. Second instance courts

High Court Bijelo Polje

The High Court Bijelo Polje passed 5 second instance judgments for 9 persons and 7 corruption offences, five of which abuse of office and two negligent performance of duties. On average, second instance proceedings lasted over six months, the shortest being completed in three months, and the longest almost one year.

The basic state prosecutor filed an appeal in three cases, in one both the persecutor and the victim and the defendant appealed, and in one both the prosecutor and the defendant.

One judgment was reversed as per the appeal of the basic state prosecutor, by changing up to three year suspended sentence into six-month imprisonment.

In one proceeding, the High Court partly denied and partly accepted the appeals of the prosecutor and the defendant, by changing the suspended sentences to imprisonment, while reducing the amount of compensation awarded.

In two proceedings the appeals of prosecution were rejected and acquittals upheld.

In one case the High Court rejected the appeal of victims, rejected the appeal of prosecution and as per the appeal of the defendant changed the conviction into an acquittal because, in the opinion of the second instance court, it was not proven that criminal offence was committed.

High Court Podgorica

The High Court in Podgorica passed 12 second instance judgments against 16 persons referring to 14 corruption offences, 6 being abuse of office, 4 abuse of authority in business, 3 negligent performance of duties and one passive bribery³⁶. On average, second instance proceedings lasted over 10 months, the shortest was completed in two and a half months and the longest lasted one year and seven months.

Basic state prosecutor lodged an appeal in seven cases, the defendant in four, while in one case both lodged appeals.

In five proceedings the High Court Podgorica quashed the basic court judgments³⁷ - in four cases in accepted appeals of the basic state prosecutor, and in one case the appeal of both the defendant and the prosecutor. **One conviction, 3 acquittals and one dismissal were quashed.**

Two basic court judgments were reversed, both as per the appeals of the defendant, and both originally convictions. By one High Court judgment the charges were dismissed on

³⁶ One proceeding referred to the decision as per the private appeal to the decision rejecting the request for investigation, and thus it is not included in this review.

³⁷ In one case on the account of procedural violations and incompletely established facts, in another on the account of the violation of procedure and incomprehensible recitals of the judgments, in the third on the grounds of incompletely established facts because the wording of the judgment was contrary to the reasons for the same, and in fourth the reasons for the judgment are incomprehensible and contrary to the evidence established. In the fifth case, the basic court established absolute statute of limitation on the account of amendments to the Criminal Code, while the High Court had a different interpretation of the amendments, and thus reached the conclusion that there was not statute of limitation (amendments to Art. 216 of CC to 416 - the basic court interpreted it to be Article 416 paragraph 1 of the new CC, and thus the statute of limitation has taken place, and the High Court says it is Article 416 paragraph 2 and that time for statute of limitation was interrupted by procedural actions taken in prosecuting the offence).

the account of statute of limitation during the case being heard in the second instance which lasted 13 months³⁸. This judgment was passed by judges Radule Kojović, Petar Stojanović and Stanka Vučinić who were trial judges in 8 out of 13 cases, and only 2 lasted longer than this one which was barred by limitation due to High Court's inefficiency.

These are the three Supreme Court judges which, on the account of increased caseload, were seconded to the High Court Podgorica and who received additional remuneration for that³⁹. The fact that Kojović is the deputy president of the Supreme Court, and that Vučinić was acting president of the Supreme Court is particularly disconcerting. This may have a substantial impact on possible redress against the decisions brought by these judges, because it is realistically expected that other judges will be greatly affected by the fact that they are deciding as per judgments brought by judges of superior instances.

In another case, the basic court judgment convicting a perpetrator to five months in prison was reversed to two years suspended sentence⁴⁰.

Two convictions and three acquittals were upheld, three as per the appeal of the state prosecutor and two as per the appeal of the defendant.

Appellate Court

In the second instance, the Appellate Court decided in **19 cases** against 21 persons on the charges of 22 corruption offences, five referring to abuse of office, one abuse of authority in business, seven passive bribery, eight active bribery, and one false balance. On average, second instance proceedings before this Court lasted **over six months**. The shortest lasted two months, and the longest almost a year.

Out of 19 cases decided by the Appellate Court, 12 referred to the High Court Podgorica decisions (nine convictions and three acquittals), and 7 to the Bijelo Polje High Court (five convictions and two acquittals).

Interestingly, the longest proceedings were held for rather petty offences where first instance courts pronounced acquittals. One case referred to a person who back in 1998 took 300 dinars of bribe and to whom the Appellate Court pronounced a six month imprisonment or two years suspended sentence. The second proceeding referred to a person offering 50 euro bribe to enter Montenegro with a non-registered vehicle.

Five proceedings as per four acquittals and one conviction were held as per the appeals of Special Prosecutor. As per the appeals of the defendant, 11 proceedings were held, and in seven cases appeals were rejected and convictions upheld, while four judgments were reversed:

³⁸ In this case the court decided as per the appeal of the defendant lodged in late September 2008, and the judgment passed in late October of the following year stated that ten years from committing the offence elapsed with the end of 2008.

³⁹ On 18 July 2011 the Judicial Council published that the remuneration is reduced as a budget cut measure to 500 euro a month, without an indication of the prior amount.

⁴⁰ Since from 1 July 2000 to 31 March 2004 as the head of storage he was obliged to guard war reserves, but his negligence caused damages to weapons in the amount of 17,045 euro. The High Court deemed that the basic court did not take into account the extenuating circumstances.

Appellate Court judgment	Reasons	Case description
Charges dismissed	Barred by limitation due to CC amendment and poor indictment	In 2004 allowed unlawful felling and charged smaller fees than set, causing damages of 3,045 euro to the Forestry Directorate
Charges dismissed	CC amendments and prosecutor not holding jurisdiction ⁴¹	In 2007 and 2008 did not present revenues of 14,725 euro
Two year suspended instead of three month prison sentence	2010 CC amendments and extenuating circumstances	In 2003 paid larger than actual bills to another company causing damages to own firm of 17,843 euro
One month in prison instead of three	Extenuating circumstances	Offered 10 euro to a traffic warden, spent 20 days in detention

Nine convictions for corruption offences were upheld, in two cases first instance judgments were changed for lesser sentences, while in two cases charges were dismissed for people convicted of corruption in the first instance.

⁴¹ High Court decided as per the indictment of the basic prosecutor, although as of 05 July 2008 the Special Prosecutor had the jurisdiction, Law amending the Law on State Prosecution of 27 June 2008, amended Article 66

4. PROFILE OF THOSE ACCUSED FOR CORRUPTION

Two thirds of cases made available by court referred to evasion of tax and other dues and petty crimes. It is in such cases that businesspeople were most frequently convicted, which embellishes the statistics on the performance of courts in fight against corruption.

Public officials are rarely charged with corruption, even more so actually convicted, while the courts have awarded negligibly low amount of compensation for damages caused by their wrongdoing.

Civil servants, mostly the local administration staff, are convicted of corruption with somewhat greater frequency than officials, in proceedings that take somewhat less time, but still inexplicably long given the severity of offences.

* * *

The majority of court cases refer to corruption in business, most often for **failure to pay taxes** and other dues, while many such proceedings last inappropriately long compared to the negligible damages caused by these quite often **petty crimes**.

Almost half of all the cases reviewed in this exercise refer to **businesspeople**, and it is exactly in such cases that convictions were most frequently pronounced. More than one half of such cases, or almost one third of the whole sample, involved businesspeople who failed to pay taxes, contributions, duties, excise tax or other dues. Thus, **the statistics of “corruption” cases are inflated** (see more in Chapter 7).

In half of such cases the prosecution charged the accused the specific amounts of **damages** - with one in three being under 1.000 euro. Nevertheless, courts awarded only in five cases the total of 13.600 euro of damages to the state budget.

The negligible contribution to anticorruption efforts of these statistically most frequent cases is well illustrated by the data on **seizures** of proceeds of crime: 85 cartons of cigarettes, 96 bottles of alcohol, 140 pairs of shoes, car sparking plugs, horns and air filters, and 74 floor rugs.

One in three of such cases **lasts** over a year, while there are even those that lasted as many as six years. Thus, for instance, a case against an owner of a wood processing machine who failed to pay taxes on timber in the amount of 34.87 euro lasted three and a half years.

It is particularly interesting that almost one in six cases recorded in statistics as corruption refer to petty crimes - cases against foresters charged with negligence causing unlawful felling.

What is not negligible, however, is the length of these proceedings, ranging from 2 to 72 months, with mere one in five foresters eventually being convicted, meaning that in other cases costs are borne by the state budget. The pettiness of such crimes is illustrated by the fact that the total amount of damages imposed by court on foresters accused of corruption is around 5,000 euro.

Only one out of five cases refers to corruption in state administration, with the accused including two judges, 22 local officials and 37 civil servants.

Civil servants charged with corruption most frequently are the employees of local governments. The total of 25 civil servants were convicted, most to suspended sentences, and the total damages caused by their wrongdoing is under 1,500 euro.

Most of the judgments passed in cases against the few officials are acquittals, with only two judges and eight local officials being actually convicted, seven to suspended sentences and three to imprisonment, while the total damages they are obliged to pay amount to 36,700 euro.

The case study below shows that **judges and prosecutors do not act ex officio even when aware of possible grave corruption offences.**

This example shows the selective approach of state prosecutors in launching criminal proceedings for corruption cases, total lack of interest in checking the allegations of several officials committing several offences causing high amounts of damages to the budget, and lack of professional capacities and will to check the allegations which is indicative of political motifs in taking action which causes damages to the budget.

Moreover, this example shows that the High Court makes incomprehensible conclusions claiming the abuse of office remained just an attempt, although when establishing evidence it determined that the abuse led to personal gains of over 200,000 euro, and the Court fails to issue an order to seize the proceeds of an offence for which it pronounced a conviction.

Case study: Failure to act ex officio

The indictment of the Basic State Prosecutor⁴² in Herceg Novi as of 31 January 2007 against former Mayor of Herceg Novi charged him with attempted abuse of office. On 25 July 2002 he concluded, on behalf of the Municipality, an agreement with a lawyer to sue citizens for the unpaid building maintenance fee agreeing the fee for the lawyer in the amount of 75% of the fee envisaged by the Lawyer Tariffs for each sued debtor upon collection of debt.

After that, the lawyer lodged 3,926 enforcement orders and then concluded a settlement with the Mayor by which the Municipality was obliged to pay the net monthly amount of 1,650 euro plus VAT, or 99,000 euro and 16,830 euro of VAT in total.

On 29 November 2010 the High Court in Podgorica pronounced a judgment⁴³ convicting the former mayor to a six-month prison sentence.

This Court established that the Municipality was bound by an enforceable judgment to pay to the lawyer the amount of 147,225.00 with statutory interest rate as of 26 December 2003 to the account of damages for failure to honour the contract. At the same time, the Court established that this was an offence in attempt “because the hired lawyer had no gains as per the concluded settlement”.

The judgment states that in his defence the defendant pointed to personnel problems, that he had proposals imposed from the side of his party of people without proper credentials.

He also pointed out that this was not the first case in which a municipality would commission a lawyer for protection of own interests and stated several more similar examples, that all the cases for which the lawyer was hired were not handled for political reasons, i.e. parliamentary elections.

⁴² Kt.br.128/04

⁴³ Ks.br.47/09

During the trial he said that the same lawyer performed the same tasks for the Municipality of Kotor, and that he was aware even of the Municipality of Podgorica hiring lawyers in similar cases. The defendant drew the Court's attention to the fact that nothing had been done as per the cases sued by the lawyer, the parliamentary elections being most probably the reason for staying enforcement, and that enforcement proposals were withdrawn by the new Mayor, and the reason was of political nature.

In trial, the representative of Municipality stated that the outcome of hiring a lawyer was very poor and that there was the subsequent insistence for enforcement proposals to be withdrawn.

The lawyer hired by the mayor stated in trial that he performed similar tasks for the public utility company "Čistoća" from Kotor and that for their needs he handled over 2,300 cases, that he established similar cooperation with the public utility "Vodovod i kanalizacija", Kotor, with the public utilities "Javno komunalno preduzeće", Herceg Novi and "Čistoća", Herceg Novi.

The lawyer also informed the Court that all the enforcement proposals he filed were subsequently withdrawn, that he sued the Municipality of Herceg Novi for damages and was awarded the payment of costs as per the agreement in the amount of 150,000 euro which will amount to 220,000 euro when factoring in the interest rate.

Hence it is unclear for what reasons the High Court failed to apply provision of Article 113 paragraph 6 of the Criminal Code stipulating the seizure of property gains procured to another person through a criminal offence.

In the course of this trial, the Special Prosecutor became aware of other officials having committed the same offence charged to the accused, but demonstrated total lack of interest to launch proceedings against these officials. Moreover, Special Prosecutor demonstrated lack of interest to verify the allegations and suspicions that courts fail to carry out enforcements for political motifs, i.e. to investigate into the influence of politics on courts.

Additionally, as is the case in other examples covered herein, the authorised representative of the Municipality of Herceg Novi did not join the criminal prosecution and did not raise claims, although it is beyond dispute that the Municipality sustained damages in the amount of over 200,000.00 euro.

Naturally, in determining the sentence the High Court saw as an extenuating circumstance the fact that the aggrieved municipality did not join prosecution, while in assessing the punishment the Court does not mention the claim.

Such selective handling of the accused gives rise to suspicions that the prosecution and courts fail to launch proceedings for fear of this having a bearing on the results of parliamentary elections, i.e. that they operate under the direct or indirect political influence. This may be the reason why the procedures launched by prosecutors and judgments pronounced by courts are almost exclusively linked to lowest corruption levels.

5. LENGTH OF COURT PROCEEDINGS

The court proceedings for corruption cases made available to us lasted on average over 16 months. The procedures in which convictions and acquittals were made lasted on average some 15 months, while the proceedings which led to dismissals, most often on the account of the prosecutor dropping the charges, lasted on average 22 months.

The total time elapsed since raising indictments until passing judgments was twice as long as would be needed had the prosecutors filed sound indictments, instead of wasting time and resources representing cases that they later on dismissed.

There are evident substantial differences among courts, and thus first instance cases with higher courts, especially the Podgorica-based one, on average take twice as long as the proceedings before the basic courts.

Specific examples show that some court proceedings take an unreasonably long time through the fault of prosecution and the court, causing huge costs most often borne by the court budget.

Table 5 gives a detailed overview of length of proceedings by court.

First instance court	Length of proceedings			Average length of proceedings by type of judgment		
	Longest	Shortest	Average	Convicts	Acquits	Dismisses
BC H.Novi	14	14	14	14 ⁴⁴		
BC Kolašin	32	2	12	8	18	7
BC Plav	39	2	13.5	9	2	39
BC Rožaje	45	2	9	10	4	
BC Žabljak	34	2	10	13	11	15
BC Danilov	58		58	58		
BC Pljevlja	11	2	7	9	7	
BC Berane	72	1	12	18	8.5	16
BC B.Polje	90	0.15	16	13	21	8
BC Cetinje	42	5	19.5	5	42	12
Basic	90	0,15	13	13	14	13
Viši sud PG	138	2	35	25	52	49
Viši sud BP	57	1	16,5	8	-	34
High	138	1	28	19	52	43
All courts	138	0,15	16,5	15	15	22

Table 5: Length of proceedings by courts (in months)

The longest corruption proceedings was heard before the High Court in Podgorica and lasted over 11 years. The shortest was completed in the Basic Court Bijelo Polje in four days.

On average the court in Danilovgrad took the longest to end a proceeding, but it should be borne in mind that this involves only one case handled by this court over this period. However, much more disconcerting is the **Basic Court in Berane** which handled quite a large number of cases, but its cases took on average **18 months**.

This court heard the case which lasted the longest overall and ended in a conviction. It took six years and involved a forester convicted to three month imprisonment, or a year of suspended sentence since in 1995 he failed to charge for timber and pay sales tax.

⁴⁴ Available data of one case only

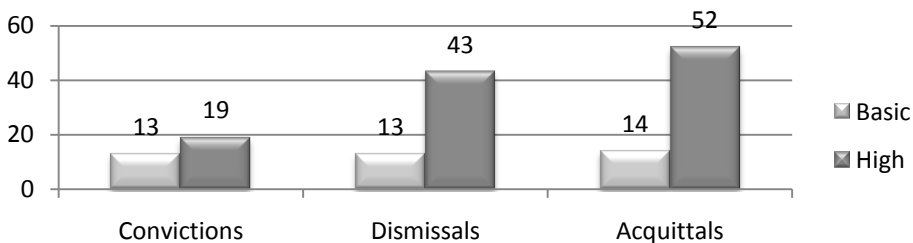
The longest proceeding ending in an acquittal took more than seven years against a head of a municipal services department in the Municipality of Bijelo Polje charged with the abuse of office in public procurement from 1994 and acquitted for lack of evidence.

One in three proceedings ending in acquittal were held against foresters for not taking good care to prevent unlawful felling, and on average took one year.

On average, cases ending in dismissals last the longest - in basic courts on average over a year, while in high courts on average almost four years before dismissing the case.

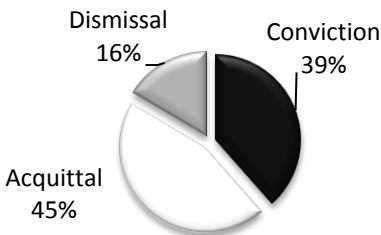
It is particularly noteworthy that **almost 90% of cases ending in dismissal were the result of prosecutor dropping the charges only, on average, after almost two years** - after a year in cases heard before basic courts and after more than three years in cases before high courts. The longest such proceedings was held before High Court in Podgorica and lasted 138 months or over 11 years.

The differences in the duration of first instance proceedings between basic and high courts are presented in graph 27.

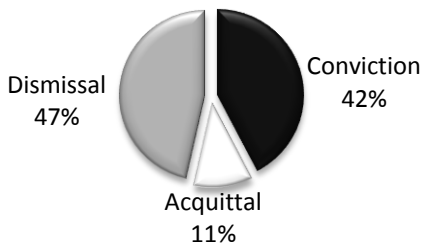


Graph 27: Average length of proceedings before basic and high courts (in months) leading to various judgments (2006-2010)

Given the total duration of all proceedings, the difference between basic and high courts are evident - cases ending in dismissals account for almost half of the time (graphs 28 and 29).



Graph 28: Basic courts - total duration of proceedings leading to various judgments (2006-2010)



Graph 29: High courts - total duration of proceedings leading to various judgments (2006-2010)

Given that some 90% of dismissals were caused by prosecutors dropping the charges, it means that the total time from raising the indictment to passing judgments was twice as long as would have been had the prosecutors submitted good indictments instead of wasting time and resources pursuing cases in which they subsequently dropped the charges.

The data show that over 80 court proceedings in which eventually no one was convicted of corruption lasted in total over 120 years or close to 1500 months. The costs of such proceedings are borne by the court budget.

A specific example given in the following case study shows that court proceedings take unreasonably long through the fault of prosecution and courts, causing huge costs, while courts keep ignoring the violation of the right to trial within reasonable time.

Case study: Duration and costs

In mid 2005, the Mayor of Podgorica set up a Commission tasked with examining the state of play in one of the public companies founded by the Capital City. The Commission sequestered the company’s documents, heard the employees and carried out other investigation measures compiling a report thereof charging the director of the said company of wrongdoing and submitted it to the state prosecution.

Basic State Prosecutor files a request for conducting investigation and the investigating judge opens the investigation. From March 2006 to April 2007 the investigating judge failed to take any step in this investigation. The state prosecutor raised the indictment on 27 April 2007 charging the accused with abuse of office.

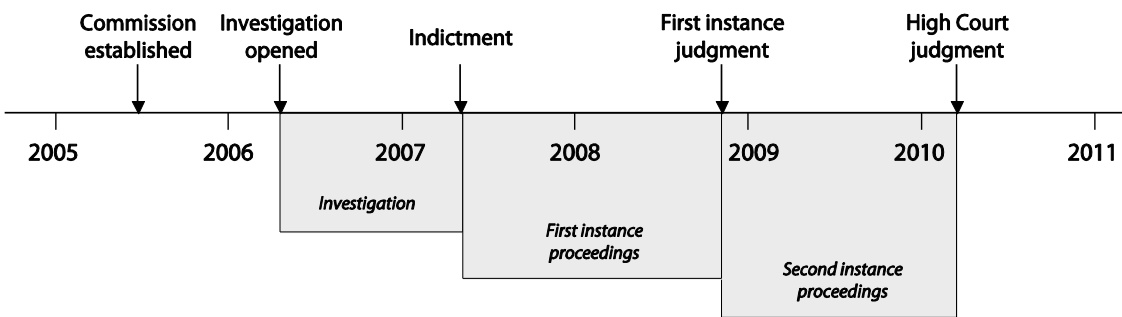
The court held the first hearing on 29 November 2007. At the subsequent hearing the judge forbids the defence lawyer to ask questions to the witness of the prosecution and postpones the hearing for 10 April 2008.

As the case proceeded, the panel of judges changed twice, and the defendant, in line with the provisions of the Law on Trial within Reasonable Time⁴⁵, on 11 August 2008 submitted to the court president the Request for accelerating the proceeding. The Court president informed the defendant that, as told by the trial judge - the third in a row adjudicating in the first instance proceedings, the case would be closed within two months. Following this, five more hearings were held, and the first instance judgment was passed three months afterwards acquitting the accused of charges.

Since the prosecutor lodged an appeal against such judgment, a year after the first instance judgment, on 24 March 2010, the High Court rejected the appeal as unfounded, thus the accused being acquitted of all charges by an enforceable judgment.

Apart from the three different panels of judges, this case was also represented by three different prosecutors, also causing postponement, the total of 13 hearings were held before the first instance court, plus two postponed ones, without a single evidence being established which was not known to the state prosecutor at the time of launching the criminal proceedings.

Graph 30 shows how long each stage of the proceedings lasted.



Graph 30: Duration of investigation, first and second instance proceedings

Although the Basic Court previously did establish the violation of the right to trial within reasonable time, the Supreme Court rejected as unfounded the complaint for just satisfaction.

For the duration of the proceedings, the defence pointed to the fact that the defendant contracted the deals he was charged with at lowest prices with evidence to that effect in

⁴⁵ Official Gazette of Montenegro 11/2007 of 13 December 2007
53

the case file confirming that other persons contracted, and still do, the same services at prices exceeding even two times the ones that the state prosecutor deemed damaging in the said case.

Prosecution did not launch any proceedings against such persons, nor did the mayor attempt to verify such data similarly to what he did in this case.

Although the report of the Commission set up by the Mayor was not accompanied by any document in proof of any allegations, for over four years, since they were provided with the document, the prosecutor insisted on prosecution.

During the proceedings the defence pointed to the fact that the state prosecutor who launched the criminal proceedings was related to a member of the Commission set up by the Mayor, and yet again that the same member of the Commission was related to the Mayor himself. During the proceedings, neither the court nor the prosecution had anything to say regarding these circumstances.

Defence filed a criminal report against the prosecutor acting in this case for suspicion of having committed the abuse of office. Soon after the report was filed, this prosecutor was promoted to High State Prosecution Office, and the criminal report was soon rejected.

Eventually, the costs of the criminal proceedings caused by such actions of the state prosecutor and postponements by the court were borne by the court budget.

Given that the defendant also lodged an application with the European Court for Human Rights for violation of fundamental human rights during this proceeding, it is possible that the final amount of budget resources to be paid as compensation for damages might be even larger.

6. PROBLEMS NOTED BY TYPES OF JUDGMENTS

6.1. Convictions

Courts have a very lenient penal policy, especially for corruption offences committed by public officials in many cases contrary to restrictions envisaged by law.

The data show that High Courts, in first instance proceedings, had a somewhat stricter penal policy than the basic ones. Nevertheless, there are examples that the same courts, acting as per appeals to the first instance judgment, additionally reduced the sentences.

It is evident that the penal policy is uneven, and the courts were not led by the amount of damages as the criterion in pronouncing sentences. The case law shows that basic courts punished by suspended sentences the officials who abused office causing damages to the state budget, while high courts pronounced imprisonment sentences to individuals who offered bribe to traffic wardens, after having them kept in detention previously.

Small amounts of damages have been awarded, and the seizure of proceeds of corruption confirms that courts only handled the least severe corruption cases.

The case law showed that the representatives of aggrieved institutions in many cases did not ask the public officials or civil servants to compensate for the damages caused by corruption. In some cases, the state representatives claimed the accused to be innocent, despite the opposing findings of the court, and some expressly refused indemnification. There are examples demonstrating that some courts took as an extenuating circumstance the fact that the state representatives did not file claims, thus pronouncing less severe sentences to those charged with corruption.

Some cases confirm that prosecutors lack capacities to estimate the damages caused, thus prosecuting perpetrators for lesser charges than actually committed.

The justification that difficulties in proving such offences and the inability of resorting to covert surveillance caused poor performance in curbing corruption is unacceptable. Namely, such measures could have been used even before in more severe corruption cases, but their application would have led to launching proceedings for high-level corruption. Thus, there is only one judgment based on evidence procured through covert surveillance.

This confirms the fact that the prosecution failed to prosecute and, by extension, courts did not handle high-level corruption cases.

6.1.1. Types of sanctions pronounced

In the case of three quarters of convictions, basic courts pronounced suspended sentences for corruption, while in over 90% of first instance judgments of high courts imprisonment was pronounced.

One in three second instance judgments reduced the punishment pronounced in the first instance, while only one in five cases more severe punishments were pronounced.

Basic courts very rarely pronounced monetary fines, while high courts did not pronounce such sanctions for corruption offences.

6.1.2. Legal framework

The legal grounds for reducing sentences is contained in the Article 45 paragraph 3 of the Criminal Code stipulating that the court may reduce the sentence when there are particular extenuating circumstances and when of the opinion that even with the reduced sentence the purpose of punishment may be achieved.

Article 42 of the Criminal Code lays down general rules of setting the punishment levels by envisaging that the court is to determine the punishment within the limits stipulated in law for the given offence with a view of the purpose of punishment and taking into account all circumstances affecting the severity of punishment.

According to Article 32 of the Criminal Code, the purpose of punishment is to prevent the perpetrator from committing offences and to act as a deterrent for any his future wrongdoing, but also to act as a deterrent to others not to commit offences, to be an expression of societal judgment of such offences and the obligation to adhere to the law, to strengthen the ethics and be conducive to developing social responsibility.

A suspended sentence may be pronounced when an imprisonment sentence of up to two years is determined for the perpetrator⁴⁶. In deciding whether to pronounce a suspended sentence, the court is particularly to take into account the personality of the perpetrator, his prior life, his conduct after having committed the offence, the degree of guilt and other circumstances under which the offence was committed⁴⁷.

The Criminal Code does not limit the extenuating or the aggravating circumstances, but does point to the most relevant circumstance which the court, when establishing their existence, must take into account in deciding on the punishment. It is the degree of guilt, the motifs leading to offence, the degree of threat to or violation of a protected asset, circumstances under which the offence was committed, prior life of the perpetrator, personal circumstances, conduct after the offence was committed, in particular the relation towards the victim, and other circumstances referring to the personality of the perpetrator.

The law stipulates that the circumstances which are features of the offence may not be taken into account neither as aggravating, or as extenuating circumstance unless it exceeds the measure needed for the existence of the offence or certain form of the offence or there are two or more such circumstances, and only one is needed for the existence of a more or less severe form of the same offence.

6.1.3. Reducing sentences as a rule, not as an exception

By reviewing the judgments made available to us by the courts in criminal proceedings for corruption cases, we noted disconcerting differences in pronouncing punishments and very lenient penal policy, particularly for corruption offences committed by public officials. The examples presented in this chapter show some drastic differences in case law both among courts, and within courts.

Contrary to the Criminal Code provisions, in judgments which were subject to our review, reducing sentences was done without proper grounds, without any justification, and quite frequently with reasons which could not be regarded at all as the circumstances relevant in determining the punishment, especially not a more lenient one.

⁴⁶ Article 54 paragraph 1 of the Criminal Code

⁴⁷ Article 54 paragraph 4 of the Criminal Code

Thus, in rare cases against public officials, when their guilt was established, courts as a rule resorted to more lenient punishments. In such judgments, some extenuating circumstances not known in the law were used as reasons stated for reducing sentences, such as that the injured party, i.e. the state, did not claim the return of unlawful proceeds into the budget.

Namely, it is the right of the injured party to join criminal prosecution, but also an obligation on the part of the state actors to claim compensation for damages caused to the budget. Thus, lack of interest for indemnification to the budget may and must not be deemed as an extenuating circumstance.

The choice of the injured party not to join prosecution and not to raise claims may be deemed as an extenuating circumstance for the defendant only if it was a result of the defendant's conduct. For instance, when the defendant shows remorse, compensates for damages or at least expresses readiness to do so, i.e. when he reaches an agreement with the injured party of the way of compensating for damages.

In addition, some courts see as an extenuating circumstance the fact that someone is a reputable person, since he was occupying the office of a mayor, although it was established that he abused the said office.

For instance, in the case against the former speaker of the local parliament in Šavnik, the Basic Court in Žabljak reduced his sentence on the account of him being "a reputable person who performed the office of the speaker of the local parliament, and such a circumstance was taken as particularly extenuating and was taken as a ground for reducing the sentence".

Following the legal description of the abuse of office, only an official may be a perpetrator of such an offence. In this case the Court established that the accused committed the offence in his capacity of a speaker of the local parliament - that is, that he has the capacity of an official needed as a prerequisite for this offence.

Hence, the circumstance which is essential for the existence of the said offence in the first place was taken by the court as an extenuating circumstance and a ground for pronouncing a more lenient punishment.

Case study: Reducing sentences in the second instance proceedings

This case shows how the High Court in Podgorica reverses imprisonment sentence to suspended sentence without stating any reason for doing so. In addition, the Court took note of damages caused, but took no actions to secure the defendant would compensate for it.

The judgment of the Basic Court in Herceg Novi⁴⁸ of 19 February 2009 pronounced a five-month prison sentence for negligent performance of duties. Deciding as per the defendant's appeal, the High Court in Podgorica passed on 11 November 2009 the judgment⁴⁹ reversing the first instance ruling and pronouncing a two-year suspended sentence.

The High Court judgment says that in committing this offence the defendant caused damages in the amount of 17,045.01 euro. However, the High Court also stated that the first instance court properly assessed all the circumstances relevant for determining the punishment, finding only extenuating circumstances for the defendant. The High Court fails to mention such circumstances, but concludes that the first instance court did not take them

⁴⁸ K.br.111/2008

⁴⁹ Kž.br.619/2009

into account enough to the benefit of the defendant and that in the specific case there is room for suspended sentence being pronounced.

For its part, the Criminal Code stipulates⁵⁰ that the court, in deciding whether to pronounce a suspended sentence, will particularly take into account the personality of the perpetrator, his prior life, his conduct after having committed the offence, the degree of guilt and other circumstances under which the offence was committed.

In the specific case, in its judgment the High Court does not mention at all any of the said circumstances which, by proper application of the Criminal Code, must be particularly taken into account.

The Criminal Code stipulates⁵¹ that in suspended sentence the court may decide that the sentence will be effectuated if the convict fails within stipulated time to return the proceeds of crime, fails to compensate for damages caused or fails to meet other commitments. The deadline for meeting such commitments is set by the court and checked on set intervals.

In the specific case, the High Court established that the accused caused damages in the amount of 17,045.01 euro. Not only that this circumstance was not taken into account when pronouncing the suspended sentence, but the High Court did not even use the authority to stipulate that the sentence would be effectuated if the defendant failed to compensate for the damages.

The above judgment was passed by the panel consisting of Supreme Court judges seconded as assistance to the High Court on the account of its caseload (more details in Chapter 3.4). Thus, the doubts of the mode of operation and the professional capacities of courts are more than justified given that the judges of the highest instance may pass such rulings without any justification.

6.1.4. Uneven penal policy

Courts have fully neglected one circumstance which, according to the provisions of the Criminal Code, needs to be particularly taken into account when determining punishment - the degree of violation or threat to the protected asset. This circumstance needs to be made more specific, and it is done by assessing the degree of consequences of the given offence.

Specific examples presented herein show that courts were not guided by the amount of damages as a criterion in pronouncing punishment. To the contrary, the case law demonstrates that offences which resulted in negligibly small damages for the state were punished more severely than the abuse of public authorities causing damages in the range of several hundred thousands of euro.

The examples demonstrate that basic courts have a particularly **lenient penal policy against public officials and people with special authorities**. It was noted that when determining sentences in such cases courts often take as extenuating circumstances some things which, by proper application of the law, may never be seen as such.

In some cases, when pronouncing sanctions, the courts regarded as an extenuating circumstance the fact that the relevant state authorities did not ask for **compensation for damages** to the budget, in full disregard of the large amounts of damages which, as a consequence of the offence being committed, would need to be regarded as an aggravating

⁵⁰ Article 54 paragraph 4

⁵¹ Article 53 paragraph 2

circumstance for the defendant. The examples also show that even within the same courts **more lenient sentences are pronounced in cases when the State of Montenegro is damaged for many times larger amounts** than when the damage is negligible or non-existent.

Thus, a forester who caused the damages to the budget in the amount of some 500 euro got the same punishment as the public official who caused damages to the budget in the amount of some 14,000 euro, while the mechanical technician in TPP Pljevlja who did not cause any damages to the budget, but to the company, was pronounced a much more severe punishment.

There is also an interesting case of a registrar who unlawfully entered two persons into the civil register and was pronounced a suspended sentence. When he repeated the offence, doing the same thing for five persons more, he was convicted to an even more lenient sentence.

In inventing the justifications for reducing sentences in the rare cases in which public officials are charged, courts frequently state as extenuating circumstances the proper attitude and conduct of the accused during hearings, which is actually a statutory requirement for all parties to the criminal proceedings, and may and must not be seen as an extenuating circumstance.

Table 6 contains basic information of the said cases.

Court	Rožaje	Pljevlja	Zabljak	Zabljak	Bijelo Polje
Sentence	6-month prison sentence	4-month prison sentence	15-month prison sentence or 3 year suspended sentence	6-month prison or 2 year suspended sentence	6-month prison or 2 year suspended sentence
Occupation of the defendant	Company director	Mechanical technician at TPP Pljevlja	Speaker of the local parliament in Žabljak	Speaker of the local parliament in Šavnik	forester
Prior conviction	No	No	NO	NO	Yes
Damages for the budget	€34,446	Not assessed by the court	€18,200	€14,316	€532
Length of proceedings	16 months	9 months	8 months	34 months	10 months
Additional information	Sold business premises and kept the money	Convicted for one cistern full of heavy oil	Illicit agreements on the use of buildable land	Illicit approval of a housing loan	Charged lower fee

Table 6: Examples of convictions for abuse of office pronounced by basic courts

The examples involving abuse of authority in business show uneven case law even with regard to this offence (Table 7).

Court	Rožaje	Bijelo Polje	Rozaje	Rožaje	Bijelo Polje	Berane
Sentence	3-month prison sentence	3-month prison or 3 year suspended sentence	1-month prison sentence	3-month prison or 1 year suspended sentence	3 -month prison or 2 year suspended sentence	6-month prison or 2 year suspended sentence
Occupation of the defendant	Company director	Receiver	Company owner	Company owner and a local civil servant	Company owner	Company owner
Prior conviction	Yes	No	Yes	Yes	No	No
Damages for the budget	€23,598	€41,637	€115	€309	€133	€413
Length of proceedings	45 months	26 months	6 months	3 months	5 months	18 months
Description of the case	Paid out salaries without taxes and contributions	Paid out salaries without taxes and contributions	Failed to pay excise tax and VAT for 25 cartons of cigarettes and 3 litres of whiskey	Failed to pay tax and customs duty for 150 pairs of jeans	Failed to pay excise tax and VAT for 329 boxes of cigarettes	Failed to pay excise tax and VAT for 65 bottles of alcohol and 10 cartons of cigarettes

Table 7: Examples of convictions for abuse of authority in business pronounced by basic courts

The receiver who caused damages of 40,000 euro was pronounced a suspended sentence, and a company director for the same offence causing two times less damages was convicted to imprisonment.

The company director had prior convictions, unlike the receiver, which could be the reason for harsher punishment.

However, then it is hard to explain why an entrepreneur from Bijelo Polje, who caused damages three hundred times less than the receiver, again with a clean record, was pronounced the same punishment. Similarly with a company owner from Berane, again without prior convictions, causing one hundred times lesser damages than the receiver, and being pronounced twice longer sentence than the receiver.

An entrepreneur from Rožaje who failed to pay taxes in the amount of 115 euro was pronounced a prison sentence. This person had prior convictions, but the same holds true for the company director, again from Rožaje, also employed as a local civil servant, who committed the same offence with twice bigger damages and was convicted to suspended sentence only.

The example of the only judgment of basic courts referring to active bribery only reconfirms the uneven case law. The basic form of this offence is punishable by six month to five year imprisonment, the same as for non-qualified abuse of office. As a rule, basic courts pronounced suspended sentences for abuse of office, even in cases when the budget has suffered several thousand euro worth of damages, while in one case of offering 40 euro bribe, in an unusually expedient proceeding, lasting several days only, they pronounced non-replaceable 45 day prison sentence.

- - -

The examples of first instance judgments of high courts show that the damage to the state budget does not play a role in the severity of punishment, while the penal policy puts on equal footing the abuse of public office and the abuse of one's position in a private company.

The examples show that the mayor who closed a harmful agreement for the municipality was punished for the abuse of office with the same sentence as the businessman who overdrafted money from his company's account.

At the same time, the examples show that proceedings frequently take too long, even for less severe offences, thus the proceeding against a forester took as much time as the one against the mayor (table 8)

Court	Podgorica	Bijelo Polje	Podgorica	Podgorica	Podgorica
Sentence	12 months in prison or 3 years suspended sentence	45 days in prison	3 months in prison	6 months in prison	6 months in prison
Occupation of the accused	Elementary school principal	Forester	Director of a craftsman's shop	Mayor	Private company director
Prior convictions	No	No	No	No	No
Damages for the budget	Court did not assess damages	Forestry Directorate 3,045 euro	Court did not assess the damage	Court did not assess the damage	34,463 euro to pay to his company
Length of proceedings	21 months	46 months	72 months	46 months	8 months
Data from the indictment	In 2002 and 2003 without the School Board approval rented premises for 3,000 euro, agreements not entered into register and did not envisage the renter to pay water and electricity bills	Failed to protect against unlawful felling, collected fees at lower rates than required	In 2003 paid larger bills to another firm than the actual, thus causing damages to own firm of 17,843.90 euro	Made a deal with a lawyer at a price exceeding the market one, although the same could have been done by the municipal legal department and obliged the municipality to pay the lawyer the sum of 147,225 euro	Drew money on the account of material expenses, without receipts 34,463.21 euro

Table 8: Examples of convictions for abuse of office pronounced by high courts

While public officials who abused office and caused damages to the state budget ended with suspended sentences, High Courts imposed imprisonment sentences on individuals who bribed traffic wardens, after having kept them in detention previously.

Specific examples again demonstrate the inconsistency of penal policy, with the same court pronouncing more severe punishment to a person offering 5-euro bribe to a traffic warden than the one offering 10-euro bribe.

Description	Court	Duration of detention	Sentence
50 euro bribe	High Court Bijelo Polje	2 months	7 months
50 euro bribe	High Court Bijelo Polje	1 month	7 months
5 euro bribe	High Court Bijelo Polje	1 month and 20 days	6 months
10 euro bribe	High Court Bijelo Polje	25 days	4 months
15 euro bribe	High Court Podgorica	8 days	3 months

Table 9: Examples of punishments for active bribery

Even should there be aggravating circumstances for these people, which is not the case, there are evident drastic differences in penal policy between the high and the basic courts.

The last example presented in this chapter additionally highlights the issue of even penal policy and significant differences in pronouncing sanctions between first and second instance courts. **While first instance court pronounces a suspended sentence for the gravest form of the offence, the second instance court changes the qualification to the benefit of the defendant. And still awards more severe punishment. The example also demonstrates that penal policy of courts depends also on free appreciation of prosecutors.**

The judgment of the Basic Court in Žabljak⁵² of 23 April 2008 pronounces the defendant, a receiver, a suspended sentence for the charges of abuse of office.

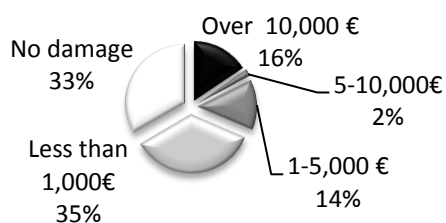
A day before pronouncement of the judgment, the state prosecutor in his closing statement changed the indictment by stating that, instead of 112,681 euro, the committed offence caused the damages in the amount of 26,836 euro.

The judgment of the High Court in Bijelo Polje does not state on what grounds the state prosecutor so significantly reduced the amount of damages, but this “estimate” was the reason why the High Court⁵³ reversed the first instance judgment regarding the qualification of the offence. Namely, it is regarded as the grave form of the offence if the damages exceed the value of 30.000,00 euro, and the indictment set the amount of damages at 26,836 euro.

Nevertheless, the High Court reversed the judgment to the detriment of the defendant and convicted him to 6-month imprisonment sentence.

6.1.5. Compensation for damages and forfeiture of proceeds of corruption

In the proceedings ending in convictions, the total damages the defendants were charged with by the prosecution amounted to 285,512 euro.



Graph 31: Estimated amounts of damages in indictments in cases ending in convictions (2006-2010)

Out of 51 proceedings ending in conviction, in 34 cases the indictments stated the estimated damage caused by the offences. The largest estimated amount was over 90,000 euro, and the lowest 28 euro.

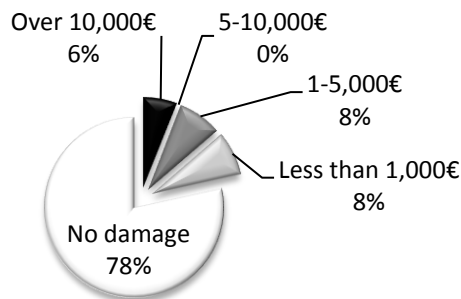
Two thirds of proceedings were conducted in cases in which, according to prosecution estimates, there were no damages to the budget, or the damage was under 1,000 euro.

⁵² K.br.61/07

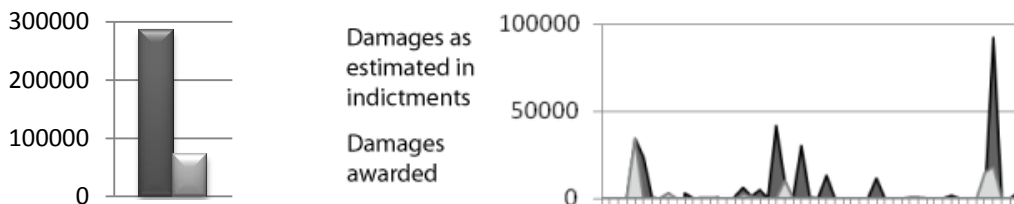
⁵³ Kž.br.1047/08

In close to 80% of proceedings ending in conviction, courts deemed there were no grounds to award damages.

In 11 proceedings, courts awarded the total of 71,503 euro of damages, or four times less than the prosecution estimates from indictments.



Graph 32: Awarded damages (2006-2010)



Graphs 33 and 34: Total estimated damages in indictments and awarded damages (for convictions) and in each case ending in a conviction

Graph 34 shows the differences in damage assessments between the prosecution estimates and what was actually awarded. For instance, in a case where the prosecution estimated largest damages, over 90,000 euro, the court awarded five times lesser amount of damages.

In eight proceedings the court ordered the seizure of proceeds of crime, and all ten courts put together for these five years on the account of convictions for corruption offences seized 96 bottles of alcoholic drinks, 85 cartons of cigarettes, sparking plugs, horns and air filters, 85 pairs of shoes for adults and 54 for children, 74 rugs, timber worth 198 euro and 360 eggs.

The review of case law reveals that competent state authorities⁵⁴, through their authorised representatives in corruption cases equally have the inconsistent approach by not claiming the amounts established in court proceedings as the damages to the budget, or by not joining the criminal prosecution, depending of the office and the position of the defendant.

Moreover, such a practice is indicative of serious doubts that prosecutors themselves, as representatives of the state assets that sustained damages, commit corruption offences by not claiming the amounts of damages established in court proceedings, and thus denying the resources which constitute public revenues.

Namely, pursuant to the provisions of the Criminal Procedure Code, it is the right of the aggravated party to raise claims or not. However, when the state of Montenegro appears as the party that has sustained damages through the offence committed, its

⁵⁴ Pursuant to provisions of Article 53 paragraph 1 of the Law on State Assets (Official Gazette of Montenegro 21/09 of 20 March 2009), Montenegro, its bodies and services founded by the state, which do not hold legal capacity, are represented before the courts and other state bodies by the Protector of Property Rights and Interests of Montenegro. Until the appointment of the Protector, such tasks and powers were exercised, as was the case before, by the Supreme State Prosecutor. Bodies and services holding legal capacity are represented by responsible persons, in terms with specific laws.

representative is obliged to claim damages. The law stipulates that monetary funds from public revenues constitute state assets⁵⁵, while competent authorities are obliged to show good husbandry practices with items and other property owned by the state and to be held accountable for that⁵⁶.

Therefore, we deem it unacceptable that competent authorities at their “free appreciation” withdraw from claiming the damages caused to the Budget of Montenegro in the amounts of several hundreds of thousands of euro, and then the court in assessing the type and amount of sanction see this omission on the part of state authorities as an extenuating circumstance.

On the other hand, these authorities, as a rule, raise claims and seek indemnification when the amounts are substantially lower, sometimes even petty, when the defendants are people of lower qualifications and occupying such posts which do not make them public officials.

The example of the Basic Court Cetinje judgment indicates that the state budget remained uncompensated for over 330,000 euro since the legal representative of the state failed to file a claim, and the court took that fact as an extenuating circumstance in determining the sentence.

By the Basic Court Cetinje judgment⁵⁷, the director of the public utility company from Cetinje was convicted on the account of two charges: tax and contributions evasion, and abuse of authority in business. The indictment charged her with having caused the damages to the state and the local budgets of the total amount of 350,977.24 euro⁵⁸ on the account of tax and contributions evasion.

The authorised representative of the state joined criminal prosecution, but without raising claims for damages to the state budget in the amount of 336,418.69 euro, while the representative of the municipality claimed much lesser amount and was instructed by the court to seek redress in civil proceedings⁵⁹.

In determining the type and amount of sanction, the Basic Court Cetinje regarded as an extenuating circumstance the fact that “authorised representative of the State of Montenegro as the aggrieved party did not raise any claims”.

There are similar examples from Bijelo Polje, where in two proceedings where the amount of damages was estimated at over 40,000 euro, and over 30,000 euro, respectively, no claims were raised by the representative of the State. There are similar examples in other courts, as well.

There are examples in which, in addition to disregarding the obligation of conscientious and lawful care for the state assets, the representative of the aggrieved state institution would assume the role of the defence attorney of the accused claiming that the damages were not sustained, although the court subsequently established otherwise.

The Basic Court in Rožaje convicted the executive manager of DD "Ibarmond", Rožaje on the charges of abuse of office.

⁵⁵ Pursuant to provisions of Article 2 paragraph 1 and Article 10 paragraph 1 bullet point 21 of the Law on State Assets

⁵⁶ Article 3 paragraph 2 of the same Law

⁵⁷ K.br.201/10 of 19 November 2010

⁵⁸ Out of the total, the damages sustained by the Old Royal Capital Cetinje amounted to 14,558.55 euro, while the State of Montenegro sustained damages worth 336,418,69 euro.

⁵⁹ The authorised representative of the Old Royal Capital joined the prosecution and raised claims, stating that the amount of claim would be provided subsequently. The Court instructed the Old Royal Capital to resort to civil proceedings for compensation for damages.

In this judgment the Court established the damages to the municipal budget in the amount of 4,688.10 euro. The representative of the aggrieved Municipality of Rožaje, holding a majority stake in the company, stated at the trial that the municipality did not suffer any damages, “and thus is not raising any claims”.

The example of the proceedings held before the Žabljak-based court shows that the local government that sustained damages, in a proceeding against its former local official, expressly refuses the compensation for damages to the budget with the “justification” that they received new funds from the Ministry.

The Basic Court in Žabljak convicted the former Speaker of the local parliament in Šavnik on the charges of abuse of office and established that his actions caused damages to the Municipality of Šavnik in the total amount of 14,316.40 euro.

In trial, the Municipality of Šavnik initially raised claims, only to drop them later on justifying it by saying that the Ministry of Finance transferred the funds to settle the commitments including the amount of the housing loan which was subject of the criminal proceedings.

In the rationale, the Court stated that the Municipality of Šavnik sustained damages through the commitment of offence, but that it may not award the damages because there is no such claim.

The following example shows that the state prosecutor was not able in four years of the duration of the first instance proceedings to properly assess the personal gains, which is a precondition for graver qualifications, i.e. graver form of the offence, but does so in the appellate procedure.

The judgment of the Basic Court in Ulcinj⁶⁰ of 02 November 2007 convicted two persons to suspended sentences on the charges of abuse of office. The High Court Podgorica quashed⁶¹ this judgment and returned the case for retrial to the first instance court with the justification that the accused were not charged with having procured great material gains, but such qualification was only proposed by the state prosecutor in the appeal.

6.1.6. Application of covert surveillance in proving corruption

Until the most recent amendments to the Criminal Procedure Code, covert surveillance measures could have been ordered only if involving offences punishable by 10-year imprisonment or more and for organised crime offences, the fact frequently noted by the judicial authorities as one of the chief problems in detecting corruption and handling such suspects.

However, given the statutory limit on offences punishable by 10 or more years of imprisonment, covert surveillance could have been ordered even before the amendments entering into force, i.e. 26 August 2010, for a number of offences that the Tripartite Commission classifies as corruption offences, as shown in Table 10.

⁶⁰ K.br.158/03

⁶¹ Kž.br.464/2008

Offence	Covert surveillance	
	Old law	New law
money laundering (Art 268 Criminal Code (CC);	para 2&3	All forms
violation of equality in business (Art 269 CC);	No	No
causing bankruptcy (Art 273 CC);	No	No
causing false bankruptcy (Art 274 CC);	para 2	All forms
abuse of authority in business (Art 276 CC);	para 2	para 2
false balance (Art 278 CC);	No	No
misevaluation (Art 279 CC)	para 3	All forms
disclosure of business secret (Art 280 CC);	para 2	para 2
disclosure and use of stock exchange secret (Art 281 CC)	para 3	para 3
abuse of office (Art 416 CC)	para 3	para 2& 3
negligence in performance of duties (Art 417 CC);	No	No
trading in influences (Art 422 CC);	No	All forms
passive bribery (Art 423 CC);	para 1&3	All forms
active bribery (Art 424 CC);	No	All forms
disclosure of official secret (Art 425 CC);	No	All forms
abuse of monopoly (čl.270 CC);	No	No
negligent performance of business activities (Art 272 CC);	para 3	para 3
fraud in service (Art 419 CC).	para 3	para 2& 3

Table 10: Covert surveillance - overview of authorities from the old and the new law

Hence, covert surveillance could have been used even before for graver forms of some offences. Nevertheless, in practice there are very few cases where proceedings were launched based on evidence gathered through covert surveillance. The excuses that difficulties in proving such offences and the inability to use covert surveillance were the reason for poor performance in suppressing corruption are, therefore, unacceptable.

In judgments in corruption cases made available to us, covert surveillance measures were used in two cases only. Both cases were heard before the High Court Podgorica, and both referred to offences committed before the amended Criminal Procedure Code extending the authorities to apply such measures entered into force.

In one case⁶² 11 persons were put to trial for several offences, including active and passive bribery. In establishing evidence, the Court heard the audio recording of three conversations referring to one of the 11 accused and read the transcripts of conversations recorded as per the orders of the investigating judge. However, the judgment in this case is not based on evidence procured through covert surveillance. Moreover, this evidence proved to be irrelevant and was not assessed at all in the judgment.

In the second case⁶³ five persons were put to trial charged with active and passive bribery. In establishing evidence, the Court read the report of the Police Directorate on the use of covert surveillance measures with photographs and video recordings of persons, premises and vehicles, such recordings were shown in trial, the final report on the use of covert surveillance measures was read with transcripts and text messages contained in transcripts of intercepted telephone communication among the accused, and the actual recordings of intercepted telephone conversations were listened to.

⁶² Ks.br.19/09

⁶³ Ks.br.14/09

In the judgment pronouncing the defendants guilty and stipulating sentence the court refers to the evidence procured through covert surveillance and, among other things, bases its judgment on such evidence.

Hence, there is only one corruption case in which covert surveillance measures were applied that evidence so procured was used in proving the offence. Given that it involves measures applied at the time when their use was possible only for offences punishable by 10 or more years' imprisonment, this inevitably leads to the conclusion that in suppressing what is known as high-level corruption (certainly graver offences punishable by 10 and more years' imprisonment) these measures were almost not used at all.

6.2. Expert witnesses and acquittals

Although judges must know what acts are considered to be criminal offences, some examples demonstrate that expert witnesses are also known to resolve matters of law from the sole jurisdiction of courts and thus, instead of judges, almost passed acquitting judgments.

Thus, the Basic Court in Pljevlja passed an acquitting judgment in a case against the director of the public utility company "Vodovod", Pljevlja. He was charged with the abuse of office and forging official document since he evaded paying taxes and contribution to salaries, thus causing damages to the state Budget in the total amount of 85,846.66 euro.

The judgment stipulates that the defendant was acquitted on the charge of abuse of office since his actions do not constitute a criminal offence, but a misdemeanour. Such conclusion of the Court is based on the findings and the opinion of a financial expert witness who "pointed out that by law it constitutes a misdemeanour punishable exclusively by a monetary fine, both for the company and the responsible person within the company".

Moreover, the Court did not summon the representative of the aggrieved party, the State in this case, to possibly raise a claim to compensate for damages. On the contrary, the court heard in the capacity of an aggrieved party the representative of the company that procured unlawful gain by this offence, and he said that the company did not sustain damages.

The second example shows how the High Court in Bijelo Polje reversed the first instance judgment and acquitted the defendant of charges without providing any justification for such a decision and referring solely to the findings and opinion of the financial expert witness who only "handled" matters of law and interpreted legal acts. This example, however, reveals a number of other omissions.

By the judgment of the Basic Court in Žabljak⁶⁴ as of 25 July 2008 a receiver of two shareholding companies was pronounced a suspended sentence (6 month imprisonment, 2 years suspended sentence) on the abuse of office charges.

He was charged with not presenting the cash expenditures and expenses for per diem allowances in the amount of 10,409 euro and that such funds were paid out without the approval of the bankruptcy judge, that he collected 3,293 euro for the use of a private car to official purpose, and that contrary to law and without the approval of the bankruptcy judge, he procured a used wood processing machine for 128,859 euro, customs duty and VAT included.

Deciding as per the appeal lodged by the defendant, on 15 January 2009 the High Court in Bjelo Polje made a ruling⁶⁵ reversing the first instance judgment and acquitting the

⁶⁴ K.br.31/08

defendant of charges. In the rationale of this ruling, the High Court refers to the findings of the financial expert witness stating in his report that the receiver did not cause damages, that he did not make purchase contrary to law, and that the provisions of the Public Procurement Law do not apply to companies in bankruptcy.

The High Court judgment also refers to the opinion on another financial expert witness who stated that the machine was procured in accordance with the law, that the receiver was not obliged to apply the Public Procurement Law provisions, that the receiver set up production in accordance with the law and that through his actions he did not encumber the bankruptcy assets, nor deceived the creditors.

Thus, it seems that in this case two financial expert witnesses were heard and both provided opinions solely on matters of law that only the court is empowered to handle. Moreover, the High Court judgment shows that this financial expert solely interpreted laws, which is not their task, and it remains unclear why the court hired them in the first place.

The High Court itself stated that expert witnesses interpreted law which is not within their authorities, but the mandate of the court, and added that “the opinion of the Court is that the provisions of the law are properly interpreted, and that the Court interprets them in the same manner”. Apart from the statement that it interprets the law the same as the expert witnesses, in its judgment the Court fails to give any justification why it believes the defendant had acted in accordance with the law.

Furthermore, the High Court established in this judgment that the recitals of the first instance judgment were incomprehensible and that it constituted serious violation of the provisions of the Criminal Procedure Code⁶⁵ stipulating⁶⁷ that in such cases the second instance court is obliged to quash such judgment and refer the case to retrial. The same Code envisages⁶⁸ when the second instance court should reverse the first instance judgment and that such judgment might not be passed when serious violation of the criminal procedure is established, as was the case with this judgment.

Hence, once having established the procedural violation, the High Court was obliged to quash the first instance judgment and return the case to the first instance court for retrial. The reversal of the first instance judgment acquitting the receiver, based on the interpretation of law by the expert witnesses raises the question of reasons and motifs for such a decision. Incidentally, the judgment envisaged the costs of the proceedings amounting to 6,859.00 euro would be borne by the court budget.

6.3. Dismissals and responsibility of prosecutors

Some specific examples show that non-diligent or negligent performance of official duties by state prosecutors causes criminal prosecution to be barred by limitation and pronouncing judgments dismissing the charges.

The examples given in this chapter show how absolute inactivity of the state prosecutor made criminal prosecution barred by limitation. On the other hand, some state prosecutors persevere in criminal prosecution even after the statute of limitation has expired, only additionally increasing costs of the proceedings eventually borne by the court budget. In most such cases, prosecutors dismiss charges only after all evidence has been presented in court, after several years of trial, failing to give any reasons for dropping charges.

⁶⁵ KŽ.br.1294/08

⁶⁶ Article 376 paragraph 1 bullet point 11

⁶⁷ Article 397 paragraph 1

⁶⁸ Article 399

Some prosecutors change indictments, justifying that by amendments to laws or improperly assessed gravity of offence and damages caused by corruption, charging the accused with lesser charges, automatically implying shorter periods before prosecution is barred by limitation. Or rather, frequent law amendments have served in practice as an excuse to avoid criminal liability for corruption.

Some indictments were dismissed in the second instance proceedings, for being presented by unauthorised prosecutors before the court not holding jurisdiction. Such cases lead to a conclusion that neither the prosecution nor the courts have adequate professional capacities even to be aware of own purview.

6.3.1. Criminal prosecution barred by limitation

Starting from the criterion of the punishment envisaged for a certain offence, Article 124 of the Criminal Code lays down the times for statute of limitation. Given that the periods are interrupted by any procedural action towards detecting the offence or detecting and prosecuting the perpetrator⁶⁹, the absolute statute of limitation for criminal prosecution occurs when twice the time envisaged by law for criminal prosecution elapses⁷⁰.

Thus, all the judgments in which charges are dismissed on the account of criminal prosecution being barred by limitations of time were pronounced after the expiry of twice the time of statute of limitation (absolute statute of limitation), because the judgment itself presupposes procedural actions and acts by the state prosecutor which the prosecutor carried out within the times stipulated in Article 124 of the Criminal Code.

With regard to the offences classified by the Tripartite Commission as corruption offences, and given the punishments and statute of limitation for criminal prosecution set in law, absolute statute of limitation and the inability for further prosecution occurs after:

- **6 years** since commitment for negligent performance of duties⁷¹;
- **10 years** since commitment for violation of equality in business activity, abuse of monopoly, causing bankruptcy, causing false bankruptcy, abuse of authority in business, false balance, misevaluation, disclosure of business secret, disclosure and use of stock exchange secret, abuse of office and active bribery⁷²;
- **20 years** since the commitment of graver forms of causing false bankruptcy, abuse of authority in business, misevaluation, disclosure of business secret⁷³, disclosure and use of stock exchange secret, and abuse of office;
- **after 30 years** since the commitment for passive bribery⁷⁴.

It is beyond dispute in criminal law theory that the statute of limitation is based on the reasons of criminal and political nature, and is justified solely in omissions of the state to carry out and complete criminal prosecution within a stipulated period of time.

The times envisaged before absolute criminal statute of limitation for corruption offences occurs show that for most of such offences prosecution will be barred after 10 years, which

⁶⁹ Article 125 paragraph 4 of the Criminal Code

⁷⁰ Article 125 paragraph 7 of the Criminal Code

⁷¹ For graver form of this offence, absolute statute of limitation is 10 years after committing.

⁷² For lesser forms of such offences, absolute statute of limitation is 6 years after committing.

⁷³ Absolute statute of limitation occurs after 6 years if done without intention (paragraph 3)

⁷⁴ For graver forms absolute statute of limitation is after 20, or 30 years since the commitment of offence, while it is 6 years for the lesser form of the same offence

cannot be seen as a short period of time, not even for the most complex cases. Thus, each judgment dismissing charges in corruption cases on the account of statute of limitation is solely a result of intentional or unintentional omissions and inactivity of state prosecution and/or courts.

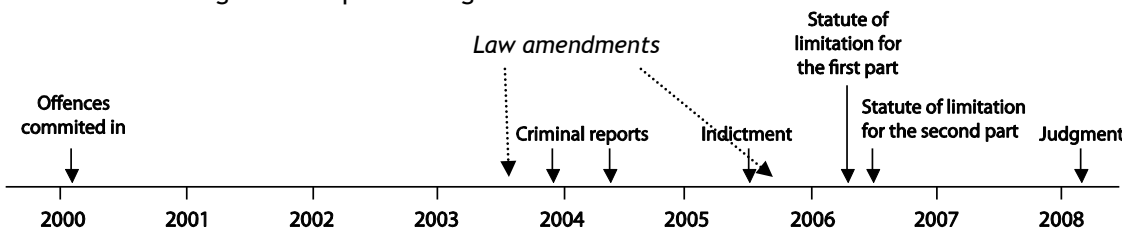
The examples presented in this Chapter show that the state prosecutor persevered in criminal prosecution for over a year after it was barred by time limitation, which only increased costs of the proceedings paid to the defendants after dismissal of charges.

Namely, on 14 February 2008 the Basic Court in Berane passed the judgment dismissing the indictment as of 26 July 2005 against the executive, the business and the financial manager of a construction company charged with the abuse of office.

In this judgment, the court applied the more lenient law for the perpetrator. Incidentally, after the offence was committed, the law changed and now was envisaging lesser sanctions for the same offence, while the second law amendment was adopted after raising the indictment and it was less favourable for the perpetrator, envisaging harsher sanctions.

The absolute statute of limitation of criminal prosecution in this case occurred for one offence on 19 April 2006, and for another on 01 July 2006.

Finally, a year and a half after the statute of limitation occurred, the Court established which law is more lenient for the perpetrator and dismissed charges. Graph 35 shows the duration of all stages of the proceedings.



Graph 35: Duration of investigation, first and second instance proceedings

Given that the offence the defendant was charged with were committed in 2000, and that criminal reports against the responsible persons in this case, as reported in the media⁷⁵ were filed in late 2003 and the first half of 2004, it is evident that lack of diligence of judicial bodies is one of the main reasons for prosecution being barred by limitation of time.

In addition, the question raised here refers to the reasons for which state prosecutor persevered in prosecution a year and a half after it was barred by limitation of time, which increased the costs of the proceeding which, as per dismissal of charges, are paid to the defendants from the budget.

Another example shows absolute inactivity of the state prosecutor in criminal prosecution for offences causing damages to the Budget which eventually made the prosecution barred by limitation of time.

A case was heard before the Basic Court in Podgorica against a director of a private company on the charges of abuse of authority in business. The proceedings were launched by an order to conduct investigation as of 25 November 1998, and the defendant was accused of having committed the said offence in 1997 and 1998.

⁷⁵ Daily Pobjeda as of 20 December 2003 and 01 April 2003

Nine years since launching the criminal proceedings, on 27 November 2007, the state prosecutor raised the indictment stating that with the commitment of this offence the accused denied public revenues procuring unlawful gain for his company in the total amount of 7,047.55 €.

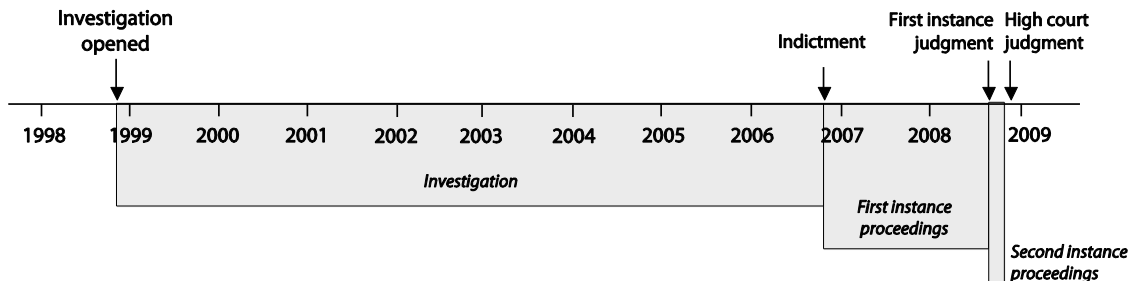
Almost ten years since launching the criminal proceedings, on 23 June 2008, the state prosecutor submitted to the Basic Court the proposal for a trial in absentio, and the Basic Court in Podgorica approved the proposal on 25 June 2008.

The Decision of the Basic Court adopting the proposal to trail the accused in absentio stipulates that a search warrant was issued after the accused back on 06 December 2001, since he is not accessible to state authorities.

On 26 September 2008 the Basic Court passed the judgment pronouncing the defendant guilty for abuse of authority in business and condemning him to three month imprisonment. The same judgment obliged the defendant to pay the Pension and Disability Fund the amount of €5,835.53 and the Tax Administration €1,312.02, as per their respective claims.

The defence lawyer lodged an appeal against this decision, and on 27 October 2009 the High Court in Podgorica passed a judgment dismissing the charges on the account of statute of limitation.

Hence, from the commencement of the criminal proceedings by filing the request for conducting investigation to raising the indictment, the state prosecutor needed nine full years to note that the accused was inaccessible and take measures in order for the trial to start, although the case file shows that the search warrant was issued seven years before the state prosecutor requested trial in absentio.



Graph 36: Duration of investigation, first and second instance proceedings

The third example demonstrates that with unchanged factual circumstances, the state prosecutor changed the indictment regarding the legal qualification to the benefit of the defendant, justifying it by law amendments, which caused the prosecution to be barred by limitation of time.

On 09 November 2010 the Basic Court in Cetinje passed the judgment dismissing the charges against the director of a state-owned company and the company staff, charged with the abuse of office.

The rationale of the judgment states that the prosecutor pointed out the accused were charged with having committed the offence referred to in Article 416 paragraph 4, in reference to paragraph 1 of the Criminal Code punishable by imprisonment ranging from 1 to 8 years.

However, with the 2010 amendments to the Criminal Code paragraph 4 of Article 416 was deleted, so the prosecutor applied the more lenient law pursuant to Article 133 paragraph 3 of the Criminal Code and charged the defendants with another offence - abuse of authority

in business Nevertheless, this offence is punishable by imprisonment ranging from three months to five years, thus leading to criminal prosecution being barred by limitation of time, and the prosecutor dropped the charges.

Hence, the prosecutor failed to consider the director of a state-owned company as a public official, for the fact that he manages state capital, but saw this offence as typical corruption in business, i.e. the private sector. The obvious intention of law amendments was to separate corruption in the public and the private sector, but this example shows that in practice such amendments served as an excuse to avoid criminal liability for corruption.

6.3.2. Dismissal after multiannual proceedings

Review of case law shows that state prosecutors dismissed the charges after several years into trials most often in their closing statements, without giving the reasons for dismissal or stating that there were no evidence to prove the defendant committed the offence he was charged with.

Such actions of the state prosecutor are indicative of inadequate and inappropriate professional capacities within this office to perform the basic function of prosecuting the perpetrators, but also that the state prosecutor passes the decision to prosecute or not in an irresponsible, arbitrary and random fashion.

As a rule, in such cases the state prosecutor was aware of all evidence already at the time of the indictment, and oddly enough, it was the prosecutor himself to eventually state that evidence propounded by him in the indictment is not indicative of the offence charged to the defendant.

The first example refers to the proceedings in which the **prosecutor failed to state the reason for dropping the charges.**

The indictment⁷⁶ of the Basic Prosecutor in Berane as of 15 February 2005 charged five persons of several abuse of office and forging public documents offences which, as per the indictment, were committed from 1999 to 2002.

Three years after raising the indictment, on 25 February 2008, the Basic Court in Berane passed the judgment⁷⁷, quashed by the decision of the High Court in Bijelo Polje⁷⁸ on 12 December 2008 and transferred to the Specialised Department of the High Court, with criminal prosecution now in the hands of the Special Prosecutor.

At the man hearing held on 08 September 2010, the prosecutor dropped the charges and the High Court in Bijelo Polje passed the judgment⁷⁹ dismissing the charges. No reasons for dismissal are stated, but the costs of the proceedings are charged against the court budget.

Incidentally, all the defendants had their defence lawyers in these proceedings who are remunerated as per valid Lawyers' Tariffs by which, for instance, remuneration for defence at one hearing for the abuse of office offence is 200 euro and is increased for additional 50% for any other and subsequent offence the defendant is charged with. Given the number of defendants, the length of the proceedings, the number of offences they were charged with and the defence attorney fee, it is beyond doubt that the defence attorney costs in this proceedings only were quite high.

⁷⁶ Kt.br.555/03

⁷⁷ K.br.156/05

⁷⁸ Kž.br.850/08

⁷⁹ Ks.br.15/09

There is a similar example of a case heard before the Basic Court in Pljevlja, and then the High Court in Bijelo Polje, firstly as the second instance, and then the first instance court. The indictment was raised in May 2008 for an offence committed five years before, in May 2003. After the first and the second instance judgment, only in February 2010, in his closing statement the state prosecutor dropped the charges and the High Court in Bijelo Polje passed the judgment⁸⁰ dismissing the charges. Again in this judgment no reasons are stated for dropping the charges, but again it was decided for the costs of the proceedings to be charged against the court budget.

Another example shows that **prosecutors drop charges with the justification of not having enough evidence of the offence being committed months after based on the same set of evidence they raised the indictment.**

By the indictment⁸¹ of the Basic Prosecutor in Bar as of 10 February 2010, the head of the Real Estate Administration, Regional Office Bar was charged with the abuse of office committed, as per the indictment, on 15 July 2004. He was charged with passing a decision, in his official capacity, to register title deeds without valid legal base for doing so, thus causing damage in the amount of 48,600.00 euro to one of the co-owners of the said property.

Hence, the state prosecutor had available written evidence whose contents was known to him at the time of raising the indictment and based on which he made the decision to proceed with criminal prosecution.

Nevertheless, the prosecutor dropped the charges eight months after the indictment, and the High Court passed the judgment⁸² dismissing the charges. The costs of the proceedings were accounted to the court budget.

In the following example, the prosecutor, after nine years and presenting all evidence, instead of the judge, “adjudicated” that no offence was committed and dropped the charges.

By the indictment⁸³ of the Basic State Prosecutor as of 10 November 2006 a director of a private company was charged with the abuse of office which, as stated in the indictment, was committed in September 2000.

On 25 September 2009, the High Court in Podgorica passed the judgment⁸⁴ dismissing the charges on the account of the prosecutor dropping the charges which followed after establishing evidence in closing statements. The Special Prosecutor said that:

“The charges against the defendant are dropped since after having conducted the procedure for establishing evidence it was not proven that the defendant actually committed neither the offence charged with in the indictment nor any other offence prosecuted ex officio”.

Hence, more than six years elapsed from the alleged offence to raising the indictment, almost three years from raising the indictment to its dismissal, or in total nine years elapsed since the alleged commitment of the offence to closing the case by dismissal of charges.

This case raises particular concerns regarding the competences and accountability of prosecutors given that here possible omissions by the Basic Prosecutor could have been

⁸⁰ Ks.br.9/09

⁸¹ Kt.br.416/08

⁸² Ks.br.19/10

⁸³ Kt.br.640/01

⁸⁴ Ks.br.22/09

rectified by the Special Prosecutor who started presenting the case before court in accordance with the 2008 law amendments, but he failed to do so.

The following example shows that it was **only after three years into the trial that the prosecutor concluded the offence did not cause any damages to the budget, although in prior stages of the proceedings he claimed and proved otherwise, and then decided that due to law amendments he should drop the charges.**

On 21 October 2010 the Basic Court in Plav passed a judgment dismissing charges against a director of a limited liability company on the abuse of office charges. The indictment was raised three years before, on 20 August 2007, and the defendant was pronounced a suspended sentence in the first instance judgment.

Acting as per appeal to the judgment, the High Court in Bijelo Polje reversed the judgment and pronounced a one year prison sentence and obligated the defendant to compensate for the damages in the amount of 120,154.31 euro.

The Supreme Court of Montenegro acknowledged the extraordinary redress of the defendant and quashed both the judgment of the Basic and the High Court, and returned the case to the first instance court for retrial.

In the repeated proceedings, the state prosecutor dropped the charges with the justification that it was not established that the defendant acquired any gains, nor that any damage was sustained, which according to the amended Criminal Code is an essential element of the abuse of office as an offence, and this law needs to be applied to the defendant because it is more favourable for him.

It remains unclear how, based on the same facts and evidence he had available three years and three months before, the state prosecutor concluded there were no damages for which he previously claimed to be amounting to over 120,000 euro, and which was confirmed by the High Court in Bijelo Polje.

It is puzzling how the prosecution keeps dropping the charges justifying it with the amendments to the Criminal Code supposedly being more lenient for the defendant given that they actually envisage harsher sentences⁸⁵ and that there is no more a need to prove any intent on the part of the perpetrator, which was not the case with the prior law⁸⁶.

6.3.3. Dismissal of charges on the account of wrong jurisdiction

Since the new Criminal Procedure Code has been in partial implementation, the Special Prosecutor, with his initial qualification determines the subject-matter jurisdiction of courts, but also decides whether he will lead the investigation entrusted to him by this Code. The Special Prosecutor may order the use of covert surveillance measures for many corruption offences.

In the example that follows **the indictment was dismissed for the sole reason of lack of competences of the state prosecutor who acted in the case for which he did not have**

⁸⁵ Before the 2006 amendments to the Criminal Code, the basic form of this offence was punishable by three year imprisonment, and with the amendments it has increased to five.

⁸⁶ As per the legal description of this offence before the 2006 amendments, it was necessary to establish the existence of intent to procure gains for oneself or others or cause damage to others as a precondition for this offence. Thus, this offence included than the subjective element of intent which needed to be proven.

the authority. Moreover, this case leads to the conclusion that neither the prosecution in general, nor the Specialised Department with the High Court in Podgorica has available adequate professional capacities even to recognise own competences.

The ruling of the Appellate Court of Montenegro⁸⁷ as of 02 December 2010 dismissed the charges of the Basic State Prosecutor from Bar⁸⁸ as of 14 September 2009. The Appellate Court, acting as per the appeal against a judgment of the High Court in Podgorica⁸⁹ passed on 09 June 2010, nullified a ruling that was pronouncing the defendant guilty of false balance and convicting him to suspended sentence.

The Appellate Court established that the High Court in Podgorica decided as per the indictment of the Basic State Prosecutor from Bar who after 05 July 2008 did not have the mandate to prosecute perpetrators of corruption offences, since this authority was transferred to the Special Prosecutor.

In line with the provisions of the Criminal Procedure Code⁹⁰, before the ruling as per the appeal the case file was submitted to the Supreme State Prosecution for consideration and proposal, and this office proposed the appeal to be rejected as ungrounded.

The Appellate Court ended its ruling by stating that it was already the High Court that had to dismiss the charges in deciding as per the complaint against the charges.

Given that the High Court acted as per the indictment of an unauthorised prosecutor, it is hardly to be expected that this court would properly assess the qualifications of the Special Prosecutor in the application of the provisions of the new Criminal Procedure Code and respond in a timely and lawful fashion to expected improper qualifications and possible unauthorised launching of investigation by the state prosecutor. It may lead to further lowering of the performance of the judiciary in fight against corruption.

⁸⁷ Ksž.br.26/10

⁸⁸ Kt.br.562/08

⁸⁹ Ks.br.1/2010

⁹⁰ Article 392.

7. CASE LAW FOR MOST FREQUENT CORRUPTION OFFENCES: TRENDS AND RECOMMENDATIONS

7.1. Abuse of office

In the majority of court proceedings defendants were charged with the abuse of office, and for the past nine years the relevant provisions stipulating this offence were amended four times.

Constant amendments of laws contributed to avoiding or diminishing liability of people charged with corruption or, at best, had no practical significance.

Frequent law amendments gave rise to the so-called “ping-pong” cases lasting for years and causing huge burden on the budget. A large number of court rulings brought in these cases produce no effects, but make their way into the court statistics and possibly contribute to projecting a better image of court performance. Particularly so in relation to the judgments quashing first instance judgments which may through statistics project a false impression of active and diligent work of second instance courts.

Courts have conflicting interpretations of amendments to laws, having different consequences to the outcome of criminal proceedings. Furthermore, the changed authorities, due to inefficiency of courts, quite often resulted in statute of limitation and dismissal of charges.

The problems indicated lead to suspicion that legal amendments stipulating the abuse of office as a criminal offence were introduced in a way which lacked seriousness and competences or were done so as to assist the actual defendant charged with this offence, but also those who might possibly be charged, in diminishing or avoiding guilt.

7.1.1. Frequency of various offences in indictments and judgments

In almost two thirds of cases before basic courts and in one out of two cases before high courts defendants were charged with abuse of office.

Both the basic and the high courts convicted one in three defendants of this offence. While the abuse of office proceedings before basic courts lasted a year on average, the proceedings before high courts lasted on average 15 months.

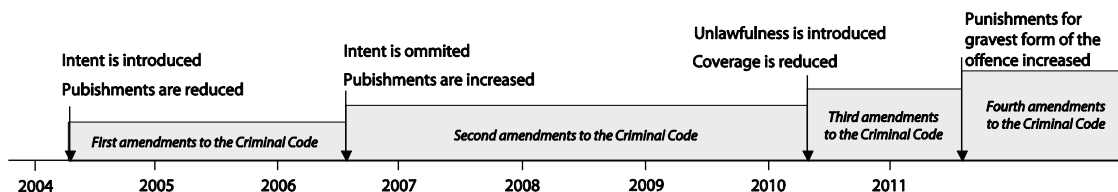
7.1.2. Legal framework

Since 2003, the provision laying down this offence has been amended three times in its entirety, and recently the fourth set of amendments to the Criminal Code has been adopted.

Firstly, the envisaged punishments were reduced and the obligation of the prosecutor to prove intent of the accused to commit crime was introduced. In the subsequent amendments the intent was deleted and the sanctions were increased again.

The third set of amendments narrowed down the number of people that can be charged with this offence only to those with public authorities, and introduced the obligation on the part of the prosecution to prove that the abuse of office was done unlawfully, but the case law is yet to render full meaning to this term.

Finally, the fourth set of amendments increased the maximum envisaged sentences for the gravest form of this offence, although the case law demonstrates that the actual penal policy of courts is far below the set maximum levels, which makes this amendment appear superfluous.



Graph 37: Criminal Code amendments - abuse of office

First set of amendments

With the adoption of the Criminal Code in 2003⁹¹, the description of the commitment of this offence was essentially changed to the benefit of the perpetrators as compared to the law in force until then.

Namely, the 2003 Criminal Code introduced one solely subjective element - **intent** to procure gains for oneself or for other or to cause damages to others. In addition, the Criminal Code significantly **reduced the sanction envisaged** for the basic form of the offence, and instead of six month to five year imprisonment envisages imprisonment up to three years.

So, since this code entered into force, in order to prove the offence it was necessary to prove the existence of intention on the part of the perpetrator, which placed substantial burden on the prosecution, which prior to that was not obliged to prove this subjective element.

In other words, after that code entered into force, the prosecution could have proven that an official abused office and procured gains to himself or others or caused damages to others, and still to have an acquittal if there was no intent of the perpetrator, or due to lack of evidence that would make such intent credible.

Such amendment led to a number of acquittals where, should the prior law have been used, a conviction would have been pronounced.

This Code did not stipulate any more the lower limit of imprisonment, and set the upper limit much lower, from five down to three years, as additional thing in favour of perpetrators of this offence.

This Code entered into force on 02 January 2004 and was in application as of the 02 April 2004.⁹² In July 2006 this Code was amended again in the section stipulating the abuse of office, and these amendments entered into force on 02 August 2006. Thus, the new stipulations of the abuse of office were in application for mere two years and four months.

⁹¹ Official Gazette of the Republic of Montenegro 70/2003 of 25 December 2003

⁹² Article 488 of the Code stipulated that it would enter into force on the eighth day upon its publication, and that it would start to be applied three months after its effectiveness.

Second set of amendments

In the Law amending the Criminal Code from 2006⁹³, the provision laying down this offence is changed again, this time to the detriment of perpetrators. Once **again the intent** is left out of the legal description, and the basic form of the offence is again punishable by **larger imprisonment sentence**, ranging from six months to five years, as was the case before the first set of amendments.

This version of the Code entered into force on 02 August 2006. In May 2010, the Code was changed again, with the same offence being stipulated differently yet again, and such amendments entered into force on 13 May 2010. Again, the newly prescribed abuse of office offence was applied as such three years, nine months and ten days.

Third set of amendments

With the 2010 Law amending the Criminal Code⁹⁴, this provision is changed again to the benefit of perpetrators by introducing the **element of unlawfulness** when the offence consists of misuse⁹⁵ of office.

It means that this offence does not exist in cases when an official performs an action that he is authorised to do by any piece of regulation and which, thus, is not unlawful, regardless if that would mean that he abused office and either procured gains or caused damages. Nonetheless, we need to point out that still there are no judgments which would give clearer interpretation of this term.

Placing the element of unlawfulness in the description of this offence obligates the court to establish whether an official acted unauthorised, i.e. whether he has undertaken an action contrary to regulations, thus being unlawful. Therefore, this offence will not exist anymore when an official undertakes an action from within the scope of authorities given by regulations.

For instance, an official may abuse office by making a decision or concluding an agreement. Regulations may authorise this person to make decisions and conclude agreements. Nevertheless, as per the current legal description of the abuse of office, this offence will not even exist, even when it is indisputable that such a decision or agreement caused damages, because the essential element of unlawfulness is missing.

Also, the 2010 amendments envisage that the perpetrator of this offence **can no longer be a responsible person in a company, an institution or other entity**. Hence, from May 2010 onwards such persons may not be prosecuted and convicted of the abuse of office regardless whether they committed an act and effectuated the consequences of their offence and regardless whether criminal proceedings have already been launched against them. Now, only an official may appear as the perpetrator of this offence.

⁹³ Official Gazette of the Republic of Montenegro 47/2006 of 25 July 2006

⁹⁴ Official Gazette of Montenegro 25/2010 of 05 May 2010

⁹⁵ Following the legal description of abuse of office, its execution is stipulated in three alternative forms: as unlawful use of office or authorities, as overstepping office or authorities or non-performance of official duty.

Fourth set of amendments

Draft amendments to the Criminal Code are before the Parliament and are expected to be approved in June 2011. The draft stipulates the **increase of the envisaged punishment** for the gravest form of abuse of office from 10 to 12 years.

In the rationale accompanying the Draft amendments to the Criminal Code, the Government of Montenegro (as the sponsor) did not state any reason for this specific modification. The increased upper limit of punishment may lead to a conclusion that the aim is to have a harsher response to this type of crime.

However, the review of case law in proceedings involving this offence shows that the predominant sanction in convictions for this offence is a suspended sentence, and the imprisonment sentences pronounced are of short duration.

There are no cases of anyone being convicted for this offence to several years' imprisonment, especially not to a punishment that would come anywhere near the current upper limit (10 years), hence the increase of the maximum sentence to 12 years appears both absurd and unjustified.

With the high upper limit of sanctions the legislator indicates the gravity of offence, but the increased maximum punishment may not affect the case law to have a stricter penal policy. On the contrary, this amendment will only make the gap between the stipulated and actually pronounced punishments bigger. Therefore, stressing the gravity of the offence through the increased maximum punishment will only additionally point to the inefficiency in its suppressing, once the stipulated punishment is compared to the actual sentences pronounced in court judgments.

On the other hand, should the motif underpinning the law amendments be to reach sterner penal policy, then it would make more sense for the legislator to increase the lower limit, and thus have an impact on the case law in order to reduce the number of suspended sentences and short-term imprisonments.

Thus, it seems obvious that the increase of the maximum prison sentence from 10 to 12 years will have no practical relevance. It might, therefore, be that the true reason behind this amendment is to possibly show greater determination in fight against corruption and/or possible lack of professional capacities in law drafting and adoption.

7.1.3. Law amendments as an impediment to fight against corruption

Law amendments imposed an obligation on courts to apply the most lenient law to all persons charged with abuse of office.⁹⁶ In addition, the amendments to the code had a direct bearing on the jurisdiction of courts in corruption cases.

The practice has shown that these amendments had a direct impact on the outcome of the majority of proceedings, and it was to the benefit of defendants. Namely, since the Criminal Code has changed several times after the offence was committed, the court is obliged to

⁹⁶ Article 26 of the previous 1992 Constitution stipulated that the criminal offences and relevant punishments would be pronounced as per the law valid at the time of their commitment, unless the new law is more lenient for the perpetrator. The current 2007 Constitution has the same provision in Article 34. Article 133 of the Criminal Code of Montenegro also envisages that the most lenient law should be applied to perpetrators if after the offence was committed the law was changed once or several times.

apply the law most lenient for the perpetrator, regardless of how long and when the said law was in effect.⁹⁷

Since most proceedings were conducted on the account of abuse of office charges, and most indictments were raised in 2007, it leads to a logical assumption that most of these offences were committed before 2006, at the time when the law much more lenient for the perpetrators was in force. Thus, in majority of these cases the law that ceased to be in existence must have been applied, but which worked in favour of the defendants.

Frequent changes of laws in the section describing this offence with very prominent corruptive elements, most often prosecuted by prosecutors, may be indicative of serious incompetence and lack of seriousness in law drafting and enactment, but also of lack of real political will to fight corruption.

Moreover, if this is put in context of the only too frequent inefficiency of courts, then it means that law amendments were done solely in the interest of persons who were put on trial for this offence. Namely, it was almost impossible for Montenegrin courts to launch and lead to an enforceable closure any proceeding for this offence for the time of the given law being in force, with the obligatory precondition that the said offence was also perpetrated at the time when the same law was in effect. Hence, in almost every proceeding for this offence over the past eight years, the court needed to resolve the issue of which law would be more lenient for the defendant, and only then to apply the said law.

So, the Parliament of Montenegro with frequent changes of laws and the Montenegrin judiciary with its lack of efficiency have directly prevented more proceedings for this offence, either already launched or yet to be launched, to end in convictions.

Hence, one of the possible conclusions is that laws do not act in the function of suppressing crime, **but constant modifications of laws contribute to avoidance altogether or diminishing liability of persons charged with corruption or, at best, have no practical relevance whatsoever, as is the case with most recent amendments referring to the definition of the abuse of office as a criminal offence.**

Different interpretation of law amendments in practice enables that a defendant is convicted to prison sentence, but also released on the account of the same charges.

Hence, the legislative framework and the case law of Montenegrin courts impermissibly allow for the defendants found in the same legal situation to be either sentenced to imprisonment, or have substantially reduced sentences or even be acquitted of charges. Putting up with such practices makes the Montenegrin courts an ideal setting for arbitrariness, and susceptible to corruption themselves.

Frequent amendments to laws contribute directly to rare application of the Criminal Code, and such rare application weakens the basic aim and safeguard function that criminal law has. Or seen from another perspective, **rare application of the Criminal Code due to its frequent changes has a direct bearing on strengthening crime and the increase of its level within the society.**

Also, such frequent changes to the Criminal Code lead inevitably to legal uncertainty, as well as possible unequal treatment towards persons encountered in the same legal situation. The studies below show what impact law amendments had on the case law of High Courts and the Appellate Court in corruption cases.

⁹⁷ Article 133 paragraph 3 of the Criminal Code of Montenegro

Case Study: It both is and is not an offence

This case study demonstrates how courts have opposite interpretation of the Criminal Code amendments, with varying consequences to the outcome of criminal proceedings. This study also confirms the conclusions that law amendments, as a rule, enable avoiding or diminishing guilt of people charged with corruption offences.

Acting as per the indictment of High State Prosecutor⁹⁸, the High Court in Podgorica passed an acquittal⁹⁹ against two responsible persons in a company on abuse of office charges.

In the rationale of the judgment the High Court noted that in May 2010 the Criminal Code was amended and that a responsible person within a company may not be the perpetrator of this offence any more. Therefore, as concluded by the High Court Podgorica in this judgment, the actions taken by the accused in the capacity of responsible persons did not constitute an offence.

The same court in several other cases interpreted the said amendment to the Code by charging the accused with another offence - instead of the abuse of office, it was of the opinion they should be charged with the abuse of authority in business. Thus, the Court left the opportunity of the accused being sentenced to up to five years imprisonment for the basic form of the offence known as abuse of authority in business¹⁰⁰.

For instance, the High Court Podgorica passed a judgment¹⁰¹, convicting a responsible person, a director of a Housing Cooperative, to three months in prison on the charges of the abuse of office. The Appellate Court reversed the High Court's judgment and reduced the sentence to suspended only¹⁰². The same Court also re-qualified the offence into the abuse of authority in business, referring to the 2010 amendments to the Criminal Code.

Hence, the Criminal Code amendments in this case were the reason why the Appellate Court changed the qualification of the offence the accused was charged with and substantially reduced the punishment. For the same offence before May 2010 the accused would have received harsher punishment.

Had the Appellate Court in the given case taken the same stance as the High Court in the first judgment referred to above, the accused would have been acquitted of charges concluding that the action taken did not constitute an offence.

Case study: Law amendments and statute of limitations

This case is indicative of how the Criminal Code amendments affected the jurisdiction of courts in criminal proceedings for corruption cases, which, due to the inefficiency of courts results in criminal prosecution being barred by limitations and charges dismissed.

On 15 February 2006 the Basic Prosecutor in Bijelo Polje raised an indictment¹⁰³ against a forester charged with the abuse of office.

⁹⁸ Kt.br.72/03 of 06 May 2003

⁹⁹ Ks.br.48/2009 of 07 July 2010

¹⁰⁰ Article 272 paragraph 1 of the Criminal Code envisages for the basic form of this offence imprisonment sentence ranging from three months to five years

¹⁰¹ Ks.br.37/09 of 07 May 2010, published a day after the amended Criminal Code entered into force

¹⁰² KSŽ.br.18/10 of 5 November 2011

¹⁰³ Kt.br.654/2004

The accused was charged with the abuse of office done between 01 January and 11 October 2004, or more than two years before raising the indictment.

On 30 October 2008 the Basic Court in Bijelo Polje, two years and eight months after raising the indictment, passed a judgment¹⁰⁴ convicting the accused to three month imprisonment.

The High Court in Bijelo Polje by its ruling¹⁰⁵ quashed the Basic Court judgment and referred the case to the Specialised Department which through the amendments to the Code, received jurisdiction to act in the first instance.

Subsequently, for over a year the case was handled by the High Court, acting as a second instance court as per an appeal, and then as a first instance after the Basic Court's judgment was abolished.

Four days before the absolute statute of limitation, on 28 December 2009, the High Court in Bijelo Polje publicised its judgment¹⁰⁶ convicting the forester to 45 days in prison on the abuse of office charges.

The Appellate Court of Montenegro, as the second instance court in this case, passed a judgment¹⁰⁷ dismissing the charges on the account of criminal prosecution being barred by imitation of time. The judgment stipulated that the indictment did not specify the actual day of committing the offence, and thus the Court assumed, as the most favourable circumstance for the accused, that it was committed on 01 January 2010. The Appellate Court noted that the statute of limitations occurred before the parties were serviced the written copy of the first instance judgment.

Case study: Law amendments and length of proceedings

This example focuses on changing the jurisdiction of courts on several occasions and all the courts handling the same case showing lack of diligence. For the duration of this criminal proceedings several laws were in effect which stipulated differently the actual offence the accused was charged with, and the charges were eventually dropped by the prosecutor after 11 years of handling this case.

On 29 March 1999, the High Prosecutor raised an indictment¹⁰⁸ against five persons charging them with several offences, among other things abuse of office and abuse of authority in business.

Three and a half years afterwards, on 30 September 2002 the High Court in Podgorica passed a judgment¹⁰⁹. A year later the judgment was quashed by the ruling¹¹⁰ of the Supreme Court as of 15 September 2003 and the case was returned to the High Court for retrial.

¹⁰⁴ K.br.271/06

¹⁰⁵ Kž.br.412/09

¹⁰⁶ Ks.br.14/09

¹⁰⁷ Kžs.br.4/2010

¹⁰⁸ Kt.br.521/98

¹⁰⁹ K.br.92/99

¹¹⁰ Kž.br.57/2003

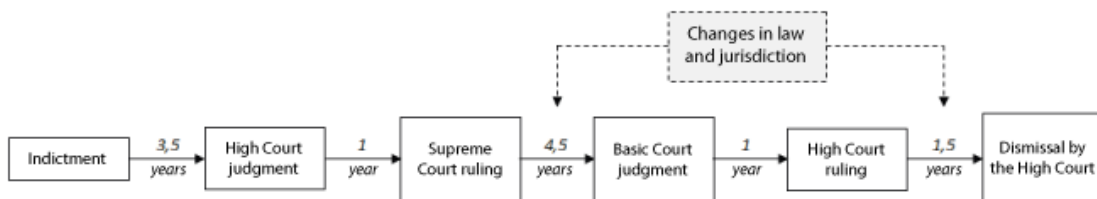
The 2003 amendments to the Criminal Code started to be applied as of 02 April 2004, with basic courts receiving jurisdiction to hear the abuse of office cases in the first instance, regardless of the form of the offence. Accordingly, the High Court relinquished subject matter jurisdiction and transferred the case file to the Basic Court in Podgorica.

On 30 January 2008, the Basic Court in Podgorica passed a judgment¹¹¹. The same was, a year and three months later, quashed by the ruling¹¹² of the High Court in Podgorica as of 18 May 2009 in the part where two accused were acquitted, and returned the case to the Basic Court.

By the 2008 amendments, high courts received jurisdiction in the first instance to hear offences which were returned for retrial. Accordingly, the Basic Court relinquished jurisdiction and transferred the case file to the High Court in Podgorica.

On a hearing held on 17 September 2010 before the High Court in Podgorica, the state prosecutor dropped the charges and the High Court passed a judgment¹¹³ dismissing the charges.

This case was handled by the Basic Court acting in the first instance, by the High Court acting in the first and in the second instance, and by the Supreme Court in the second instance. Three first instance judgments were passed, two rulings of second instance courts quashing first instance judgments and two rulings by which courts relinquished jurisdiction, but no final judgment of guilt. Graph 37 depicts the length of each stage of the proceedings.



Graph 38: Ping-pong cases - length of proceedings

7.2. Abuse of authority in business

Almost half of all the cases made available to us by courts refer to businesspeople, and it is such cases which most often ended in acquittals. These cases mostly involve evasion of taxes, contributions and other charges, used to “statistically” inflate the number of corruption cases.

Until the most recent amendment to the Criminal Code, state prosecutors had the opportunity of prosecuting responsible persons within companies for two different offences although they committed the same act, but also the court to possibly convict of different offences persons who did the same act, and consequently to pronounce different sentences.

The example presented in this Chapter demonstrates how state prosecutors arbitrarily determine the qualification of offences the accused are charged with. Specifically, prosecutors charge the same person for the same act both as corruption, i.e. abuse of authority in business, and tax and contribution evasion, i.e. an offence with no corruption features. This leaves the possibility for prosecutors to fabricate corruption statistics. Such a practice eventually leads to dropping of charges justified by the prosecution by the effects of new legal provisions in force.

¹¹¹ K.br.960/04

¹¹² Kž.br.1828/08

¹¹³ Ks.br.11/2010

7.2.1. Frequency of offences in indictments and judgments

Almost half of all cases made available to us by courts refer to businesspeople, and such cases most often ended in acquittals.

More than half of such cases, or close to one third of all cases covered by this review referred to businesspeople who failed to pay taxes, contributions, customs duties, excise tax or other charges which prosecutors qualify as the offence known as the abuse of authority in business. Thus, they inflate the statistic referring to “corruption” cases.

Greatest share of convictions pronounced by basic courts refer to abuse of authority in business, while high courts have no convictions for this offence.

7.2.2. Legal framework

Until the amendments in May 2010, the Criminal Code enabled that whoever, with the intention of procuring material gains, denies taxes in the amount under 1,000 euro could be prosecuted for a more severe offence - abuse of authority in business, and be punished harsher than whoever, with the same intent, denies taxes in the amount exceeding 1,000 euro.

The current Criminal Code, in its Article 276 stipulates the offence known as abuse of authority in business whose perpetrator may be only the responsible person in a company or other business entity with legal personality or an entrepreneur.

However, until the 2010 amendments to the Criminal Code, paragraph 1 bullet point 3 of this Article, **evasion of taxes, contributions and other public revenues is described as one of the ways for committing this offence, and majority of judgments of this type refers to this form.**

With the 2010 Law amending the Criminal Code¹¹⁴ this provision (bullet point 3 of paragraph 1 of Article 276) **was deleted**, and since then the person who by evading payment of tax and other due denies funds that constitute public revenues, does not commit criminal offence of abuse of authority in business.

Nevertheless, denying public revenues may constitute an offence or its consequence. Thus, in tax and contributions evasion the consequence is seen in denied funds which constitute public revenues. Therefore, it seems justified that the legislator deleted bullet point 3 in the criminal offence of abuse of authority in business. However, in practice some courts take this deletion to mean that the actions described therein do not constitute an offence any more, disregarding the tax and contribution evasion.

What remains unclear is in what manner, until the code modification, prosecutors and courts made a distinction between the abuse of authority in business from Article 276, paragraph 1 item 3 of the Criminal Code from the tax and contribution evasion.

Namely, tax and contribution evasion also denies funds which constitute public revenues, provided that the denied amount exceeds 1,000 euro.¹¹⁵ On the other hand, in the abuse of authority in business from Article 276 paragraph 1 item 3 of the Criminal Code this condition did not exist, so one could have been prosecuted and convicted for this offence when denying taxes in the amount under 1,000 euro.

Another thing contributing to the absurdity was that the basic form of abuse of authority in business was punishable by three month to five year imprisonment, and the basic form of tax

¹¹⁴ Official Gazette of Montenegro 25/2010

¹¹⁵ Article 264 of the Criminal Code

and contributions evasion was punishable by up to three-year imprisonment and a monetary fine, which indubitably makes tax and contribution evasion an offence of lesser severity than the abuse of authority in business.

The data on cases made available to us show that the prosecution assessed the damages caused by criminal offences in half of the proceedings, and one out of two amounts of damages awarded was under 1,000 euro. **This leads to a conclusion that prosecutors prosecuted for abuse of office many persons who denied small amounts of taxes and other dues and thus fictitiously inflated the statistical indicators for corruption offences,** even in cases where denied public revenues were so small that the prosecution would not even be entitled to prosecute them referring to this article. Also, due to the envisaged sentences for tax evasion and abuse - **for lesser evasion greater punishments were pronounced.**

The 2010 amendments envisage that the responsible person within a company may not be charged with the abuse of office, but only the abuse of authority in business.

Nevertheless, the 2010 amendments have not consistently implemented the distinction between an official and a responsible person. As per the description of the commitment of the offence from paragraph 2 of Article 272 of the Criminal Code, it is indubitable that this paragraph refers to embezzlement in business operation. Still, the provision stipulating embezzlement¹¹⁶ remained unchanged and both an official and a responsible person may appear as perpetrators.

The gravest form of embezzlement is linked with the procured gains in the amount exceeding 30,000 euro, and the gravest form of abuse of authority in business implies the gains exceeding 40,000 euro. The gravest forms of both offences are punishable by the same sentence - ranging from two to ten years of imprisonment.

Nevertheless, upon the 2010 amendments, state prosecutors had the opportunity of prosecuting responsible persons in companies for two different offences although they performed the same act, but also courts to possibly convict for different offences persons who commit the same act, and based on that to pronounce different sanctions.

In addition to the manifest inconsistency in making a distinction between an official and a responsible person, there is no valid reason that would justify substantially different punishments stipulated by the legislator for the same acts when the perpetrator is a responsible person in a company. Namely, even putting the said inconsistency aside, the question remains why a responsible person in a company **for the same act** was punishable previously by up to **12 years**, and now **for the same act** the same responsible person is punishable with maximum **5 years in prison**.

Finally, **with the 2011 amendments**, the distinction between an official and a responsible person within a company was made **more consistently**. Against this backdrop, the amendments to Article 420 were proposed envisaging embezzlement as an offence, whose perpetrator, according to the proposed amendments, may not be any more the responsible person in a company.

The new amendments to the Criminal Code envisage the increase of maximum imprisonment sentence for graver forms of abuse of authority in business from 10 to 12 years. The reasons for this modification are not given, and it is known that courts do pronounce much lower sentences than the maximum ones, making this modification appear **useless**, since it will have no effect in the change of case law.

¹¹⁶ Article 420 of the Criminal Code

7.2.3. Discretionary authorities of prosecutors in qualifying offences

The example presented in this Chapter demonstrates how prosecutors arbitrarily qualify offences they charge the defendants with. More concretely, prosecutors are known to charge the same person for the same act both for corruption, i.e. abuse of authority in office, and tax and contributions evasion, i.e. a non-corruption offence.

This opens the room for prosecutors to fabricate statistics referring to fight against corruption. This leads to dropping of charges justified by the prosecution as being the consequence of the application of new provisions.

Case study: Tax evasion is not a criminal offence

By the indictment of the Basic State Prosecutor¹¹⁷ of 17 June 2005 the executive director of a company was charged with commitment of several offences of tax and contribution evasion and abuse of authority in business.

As per the indictment, the defendant failed to report VAT in the amount of 36,695 euro thereby committing the offence of tax and contribution evasion, while he was charged with the abuse of office for not having paid to the gyro account the income earned through business activity, nor recording it in books, and salaries were paid to employees in cash, without paying taxes and contributions in the amount of 280,404 euro.

On 07 July 2010 the High Court in Podgorica made the judgment¹¹⁸ pronouncing the defendant guilty of tax and contribution evasion, while dismissing the charges of abuse of authority in business because the special prosecutor in his closing argument dropped the charges.

The judgment states that the Special Prosecutor dropped the charges because in Article 276 paragraph 1 of the Criminal Code bullet point 3 was deleted, the one referring to offences the defendant was charged with, and thus the actions taken by the defendant do not constitute a criminal offence.

In doing so, the Special Prosecutor ignored the evidence based on which he raised the indictment in the first place indicative of the defendant failing to pay taxes and contributions in the amount of 280,404 euro and based on which he previously claimed that the defendant acted with intention to procure unlawful gains.

Thus, the question imposed here is why unpaid taxes in the amount of 280,404 euro with the intention of procuring unlawful gains constitutes an offence known as abuse of authority in business, while unpaid taxes in the amount of 36,695 euro is qualified by prosecutors as tax and contribution evasion.

¹¹⁷ Kt.br.48/05

¹¹⁸ Ks.br.15/09

7.3. ACTIVE AND PASSIVE BRIBERY

While the basic courts had only one judgment for active and passive bribery, most first instance cases of high courts referred to these offences. A greater share of such cases coincides with legal amendments in court jurisdiction, but also the newly introduced obligation imposed on courts to report statistics related to corruption cases.

This review shows that frequent and inconsistent amendments of laws led to such a situation that the same person who committed the same offence could be charged and convicted of different offences, and to a different sanction.

7.3.1. Frequency of offences in indictments and judgments

The basic courts that made their judgments available did not have a single case referring to passive bribery, while high courts convicted eight persons charged with passive bribery, including one judge, two traffic wardens, two customs officers and one civil engineering inspector, all of them to imprisonment sentences ranging from five months to seven years.

Only one basic court had one case in which one person was convicted for active bribery. High courts convicted all fifteen persons charged with active bribery, all of them to prison sentences ranging from 45 days to seven months.

The most serious case referred to a judge who accepted bribe in order to pronounce a more lenient punishment to a defendant charged with traffic safety violation. In other cases the amounts of bribe ranged from 5 euro, on the account of which the person spent 50 days in pre-trial detention, to around 200 euro. In most cases the convicted persons attempted to bribe traffic wardens.

These proceedings lasted between four days and over four years, over a year on average.

7.3.2. Legal framework

The 2010 amendments to the Criminal Code stipulated for the first time active and passive bribery in the private sector or the unlawful acceptance of gifts (Article 276a) and unlawful presenting of gifts (Article 276b), drawing a distinction between that and the bribery in the public sector.

Nevertheless, the provisions stipulating active and passive bribery (Articles 423 and 424) still envisage that the perpetrator of these offences may be a responsible person in a company (paragraph 6 of Article 423 and paragraph 5 of Article 424). Thus, since May last year, a responsible person in a company may be charged on two different accounts for the same act.

It is noteworthy that the qualification of the offence defendant is charged with is of great practical significance. Namely, the basic form of passive bribery is punishable by two to twelve years of imprisonment, while the basic form of unlawful acceptance of gifts is punishable by six months to five years of imprisonment.

Offence	Accepting bribe	Accepting gifts	Offering bribe	Offering gifts
Punishable by	2 years to 12 years	6 months to 5 years	6 months to 5 years	6 months to 3 years

Table 11: Punishments envisaged for accepting and offering gifts and bribes

Also, the basic form of active bribery is punishable by six months to five years of imprisonment, while the basic form of unlawful offering of gifts is punishable by three months to three years of imprisonment.

Thus, the same person who committed the same act could be charged with and convicted of different offences, and consequently to a different sanction.

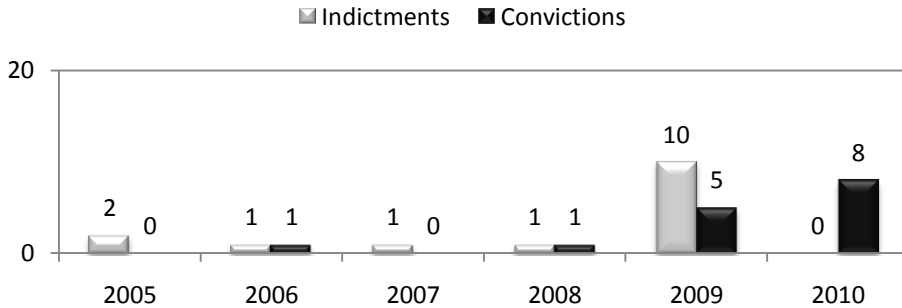
In addition, the qualification is also relevant for the subject-matter jurisdiction of courts in cases involving responsible persons in companies. Pursuant to Article 18 paragraph 1 bullet point 1 of the Law on Courts, high courts hold jurisdiction to hear in the first instance cases punishable by over 10 year imprisonment.

Therefore, if the prosecutor would charge a person with passive bribery, the high court would hold jurisdiction in the first instance, whereas the basic court would hold jurisdiction in the first instance for the same act should the prosecutor charge the responsible person with unlawful acceptance of gifts. Since the said legislative changes entered into force only recently, there was no case law in place either to confirm or clear such concerns.

However, the 2011 law amendments changed the titles of offences from articles 276a and 276b into passive bribery in business and active bribery in business. The provisions stipulating the criminal offences of active and passive bribery in the public sector have been changed accordingly so that the responsible persons in companies may not be the perpetrators of these offences and vice versa. Still, these amendments, without any justification, reduce the minimum envisaged sentences for active bribery in business from six down to three months.

7.3.3. Changes in case law after changed jurisdiction of courts

Interestingly, the greatest share of indictments for active and passive bribery was raised in 2009 and 2010, and most judgments were pronounced in 2009, after the legal amendments by which the jurisdiction for such offences was transferred to high courts¹¹⁹ and after introducing the obligation of keeping corruption cases statistics¹²⁰.



Graph 39: Years of bringing charges and first instance judgments for active and passive bribery

This trend is visible in all cases, as shown in Chapter 3, but is particularly prominent in the case of active and passive bribery.

A wrong conclusion could be drawn that a greater number of judgments in active and passive bribery cases resulted from extended authorities of the prosecution to order covert surveillance. Namely, the prosecution office and the police requested and since late August 2010 were granted extended authorities in using covert surveillance, basing their arguments on examples of active and passive bribery offences as the ones particularly difficult to prove by resorting to usual means.

However, the data show that high courts passed convictions in all cases of active and passive bribery, with only one being partly based on evidence gathered through covert surveillance. Even in that case, covert surveillance measures were applied before the relevant modifications of the law, and thus were not a result of the extended authorities of the prosecution and the police.

¹¹⁹ High courts were granted jurisdiction for corruption cases in the first instance on 10 September 2008 by entry into force of the Law amending the Law o Courts.

¹²⁰ Since 05 June 2009 the Tripartite Commission requests all courts to keep separate records of organised crime and corruption cases.

II PART

REVIEW OF THE ANTI-CORRUPTION REFORM OUTCOMES

1. THE NATIONAL COMMISSION FOR MONITORING IMPLEMENTATION OF REFORMS

This chapter provides data on the work of newly established National Commission for Monitoring Implementation of the Strategy for the Fight against Corruption and Organised Crime which represents the only body in Montenegro responsible for monitoring reforms in this field.

This chapter illustrates activities of the National Commission for the first nine months of its work and indicates that, owing to the proposals given by MANS, the sessions of the National Commission are finally open for public and that this body has been given the power to act upon citizens' complaints. The study shows that over just a few months the majority of members of the Commission changed their opinion and supported these proposals coming from MANS which they had rejected at the previous session.

Data reveal that the National Commission accepted recommendations from MANS to start innovating the existing Action Plan for the fight against corruption and organised crime given that it fails to produce desirable results which are needed to our state in this phase of the EU intergration process. The Commission started the procedure for innovating the Action Plan by using MANS recommendations as a starting point.

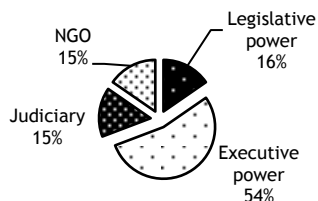
1.1. Structure and funding of the national commission

The National Commission for Monitoring Implementation of the Strategy for the Fight against Corruption and Organised Crime is the only institution in the state of Montenegro responsible for the oversight of implementation of the strategic framework for combating corruption and organised crime. The task of the National Commission is to ensure adequate implementation of the Action Plan for the fight against corruption and organised crime by competent authorities, synchronise anti-corruption reforms of state bodies, as well as to submit six-month reports on implementation of the Action Plan to the Government.

The new National Commission for Monitoring Implementation of the Strategy for the Fight against Corruption and Organised Crime (NC) was established on 30 September 2010. The Commission was established with the aim to continue anti-corruption reforms which were completed at the end of 2009, the time when the previous strategic anti-corruption papers ceased to be in force which also led to an expiry of the mandate of the previous National Commission. Secretariat of the National Commission is the Directorate for Anti-Corruption Initiative.

Ms. Gordana Đurović, who was the Minister for European Integration at the time, was appointed head of the new Commission and she was also the President of the Commission in the previous mandate. Not long after that, on 13 January 2011, after restructuring in the Government of Montenegro Mr. Duško Marković, the Deputy Prime Minister and Minister of Justice, was appointed to run the Commission.

The National Commission has 13 members, consisting of seven representatives of executive power, two representatives of legislative power and judiciary respectively, while two members of the Commission are representatives of the non-governmental sector¹²¹.



Graph 40: Structure of the National Commission

Since its establishment¹²², the Commission has had the competence to manage funds for implementation of the Action Plan. However, it was only in 2011 that the Commission received the budget of EUR 46,500 which is in fact in the framework of the budget of the Directorate for Anti-Corruption Initiative.

1.2. Activities of the national commission

Over the eight month period, the new Commission held four sessions¹²³ and determined methodology of its work and reporting by institutions on implementation of the Action Plan, it deliberated on its own Rules of Procedure twice and passed the decision on remunerations pertaining to the Secretariat of the Commission and technical persons supporting it, while it also adopted one Report on implementation of the Action Plan¹²⁴.

Adoption and Amendments to the Rules of Procedure

Rules of Procedure were adopted at the first, inaugural session of the National Commission containing the same norms like the Rules of Procedure of the previous Commission. MANS submitted amendments to this text with the aim of opening sessions of the National Commission for the public and making sure that citizens' complaints are examined by the Commission. These amendments were rejected by the majority of votes of the state institutions representatives, with the explanation given by the President of the National Commission that sessions of that body could not be open for public and that the National Commission had no competence to examine citizens' complaints.

In January 2011, after the new President of the National Commission had been appointed, MANS again proposed opening sessions for public and defining the issue of examining citizens' complaints. Proposals put forward by MANS were accepted at the IV session of the Commission by the majority of votes, while those same members of the Commission who had earlier voted against MANS' proposals voted in their favour this time.

¹²¹ The National Commission membership is as follows: Mr. Duško Marković, Deputy Prime Minister and Minister of Justice - the President; Mr. Ivan Brajović, Minister of Interior - Vice-President. Members: Mr. Aleksandar Damjanović, President of the Parliamentary Committee on Economy, Finance and Budget; Mr. Ervin Spahić, President of the Parliamentary Committee on Political System, Judiciary and Administration; Ms. Vesna Medenica, President of the Supreme Court of Montenegro; Ms. Ranka Čarapić, Supreme State Prosecutor; Mr. Veselin Veljović, Director of the Police Directorate; Mr. Srđan Spaić, Advisor to the Prime Minister of Montenegro; Mr. Predrag Mitrović, Director of the Administration for Prevention of Money Laundering and Terrorism Financing; Ms. Vesna Ratković, Director of the Directorate for Anti-Corruption Initiative; Mr. Damir Rašketić, Secretary of the Ministry of Finance; Mr. Zlatko Vujović, representative of the coalition on non-governmental organisations "Through Cooperation to Goals" and Ms. Vanja Čalović, Executive Director of MANS.

¹²² The first National Commission was established on 15 February 2007

¹²³ Since the establishment on 30 September 2010 until the end of May 2011

¹²⁴ Detailed review of agendas of the sessions is contained in Annex 1.

Under Article 6 of the new Rules of Procedure of the National Commission:

“The Secretariat of the National Commission shall accept brief submitted by a natural or legal person in relation to corruption and organised crime.

The brief from paragraph 1 of this Article shall be forwarded by the Secretariat of the National Commission to the competent state authority for the purpose of submitting a report on actions taken with regard to that specific brief.

At the first session held after the receipt of the report from paragraph 2 of this Article, the National Commission shall take position on the brief and notify the applicant thereof, at the latest within seven days from the day of holding the session.

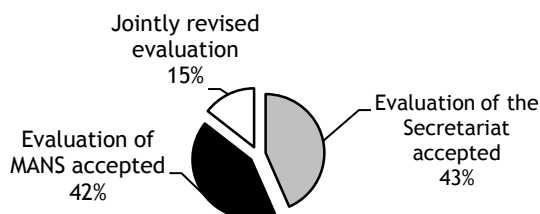
The brief and the position of the National Commission from paragraph 3 of this Article are published on the Commission website within seven days from the day of holding the session.”

Deliberation on Reports on Implementation of the Action Plan

The first report on implementation of measures set forth in the Action Plan was adopted at the last session of the Commission.

For the first time since establishment of the Commission, MANS consolidated evaluations of measures with the Commission Secretariat before the proposed report had been submitted to the Commission. On that occasion, evaluations of implementation of the total of 76 measures from the draft report were consolidated, which accounted for one third of reforms envisaged by the Action Plan.

MANS accepted evaluation of the Secretariat for 33 measures, the Secretariat accepted evaluation of MANS for 32 measures, while for 11 measures the evaluation was jointly revised, among which there were two measures whose implementation was not evaluated¹²⁵, and more details can be found in Annex 2.



Graph 41: Consolidation of evaluations of implementation of measures set forth in the Action Plan

This made it possible to avoid years long practice where MANS representative would, at the very session, submit a considerable number of amendments to proposal for the official report so as to at least partly make corrections to the institutions' unrealistic evaluations of reforms in the field of the fight against corruption and organised crime. Therefore, only three amendments, which were submitted by MANS and withdrawn at the request of the Secretariat, were debated at the session¹²⁶.

For the sake of comparison, in the course of work of the previous National Commission all the NC members submitted to the Commission 569 amendments to six proposed reports on implementation of the Action Plan. Of that number, over 85% or 480 amendments were submitted by MANS, but only 85 were accepted.

¹²⁵ More detailed information on consolidated measures is contained in XIV Report on execution of the Action Plan for implementation of measures for the fight against corruption and organised crime which was given as a separate working material for the conference.

¹²⁶ Amendments were withdrawn at the request of Ms. Vesna Ratković, PhD, Director of the Directorate for Anti-Corruption Initiative, since adoption of the amendments by the National Commission would lead to changing a large part of the first report in terms of statistical indicators, given that the structure for assessing implementation of measures would have been completely changed.

Harmonisation of the Action Plan with the European Commission Opinion on Montenegro's Application for Membership

After the European Commission published Opinion on Montenegro's application for membership of the European Union on 09 November 2010, with accompanying Analytical Report, the National Commission convened a special session to discuss these documents from the perspective of the fight against corruption and organised crime¹²⁷.

Namely, the Opinion and Analytical Report of the European Commission express extensive criticism of Montenegro concerning fight against corruption and organised crime which is why it became obvious that the existing strategic framework for combating these phenomena failed to produce desired results.

In order to harmonise the Action Plan with requirements and recommendations of the European Commission Opinion and Analytical Report, MANS was the only one in the NC to prepare specific measures for improvement, that is 220 of them. MANS initiated innovation of the Action Plan and our 220 recommendations served as a starting point for formulation of new measures for the Action Plan. The Action Plan innovation process started in March 2011 and is still in progress.

¹²⁷ This is the third session of the NC in a row which is devoted to giving recommendations to the institutions engaged in reforms in the fields of corruption and organised crime with the aim of synchronising their activities with the European Commission requirements. MANS initiated this practice in 2008 and since then it became standard for the NC to meet and give specific recommendations after publication of the European Commission Progress Report on Montenegro (that is, Opinion and Analytical Report in this case due to the specificities of the European integration process). At the previous two sessions which focused on the European Commission Progress Report on Montenegro and its part on corruption and organised crime, MANS submitted the total of 126 amendments of which 74 were accepted, while the remaining ones were rejected.

2. ANTI-CORRUPTION REFORMS - COVERING UP AS A PRETEXT FOR THE VIOLATION OF HUMAN RIGHTS

Case study in this chapter shows that the Police Directorate had been illegally collecting data on the citizens of Montenegro for more than two years through the telecommunications operator M-tel, directly violating their right to privacy guaranteed by the Constitution and international conventions.

The Action Plan enables the police to connect with databases of telecommunications operators for the purpose of collecting data in accordance with the Criminal Procedure Code (CPC), and all that with the aim of fighting corruption and organised crime in a more efficient manner.

On these grounds, the Police Directorate signed agreement with M-tel which enabled it to autonomously, arbitrarily and without any limitations have access to databases of this operator which constituted violation of the right to privacy, that is confidentiality of telephone calls and correspondence, even though such powers may be given to the police only by the law and on the basis of a court decision.

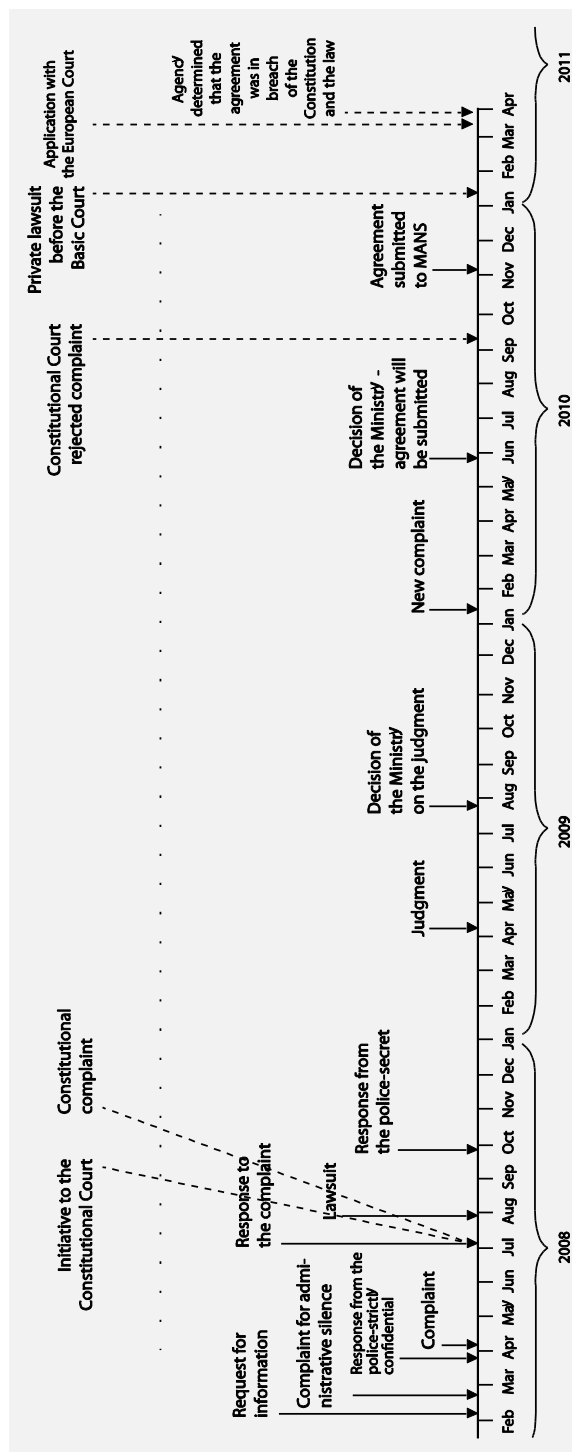
On the other hand, customers who use services of this telecommunications company do not have access to the “effective control”, a right which is guaranteed to citizens by the rule of law and which could restrict interference to the level “necessary in a democratic society” as it is laid down in the European Convention for the Protection of Human Rights and Freedoms.

Provision of Article 230 of the Criminal Procedure Code, which is stated as the basis for concluding agreement between the Police Directorate and M-tel, does not prescribe, neither can it prescribe, that the police has power to regulate access to data by mutual agreements, therefore the Police Directorate acted in such a way aware of the fact that it concluded an illegal agreement.

After that, the Police Directorate knowingly and illegally classified the agreement with M-tel as “strictly confidential” in an attempt to hide its illegal act from the public. Finally, after almost three years the Ministry of Interior published this document.

Because of all the above mentioned, the Agency for the Protection of Personal Data prohibited M-tel on 28 March 2011 to submit data to the police on the basis of the signed agreement and also ordered the Police Directorate to erase all the data it had collected so far.

This case study also shows that the Constitutional Court of Montenegro knowingly turned a blind eye on the violation of the right to privacy of citizens by delaying the proceedings commenced by MANS in which it was required that the disputable Agreement and Article of the CPC on the basis of which it was concluded be proclaimed unconstitutional. That is why MANS had to lodge application with the European Court for Human Rights in Strasbourg.



Graph 42: Review of proceedings in the case of agreement between the police and telecommunications operators

2.1. Disclosure of the agreement with m-tel

UPRAVA POLICIJE
Odjeljenje za planiranje, razvoj i analitiku
09 Br. 08/7392-7393/2
Podgorica, 27.03.2008. godine

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA – MANS
- Izvršni direktor, Vanja Čalović -


PODGORICA

PREDMET: Vaš zahtjev za dostavljanje informacija broj 08/7392-7393 od
05.02.2008. godine

Na osnovu Zakona o slobodnom pristupu informacijama, obavezama Uprave policije iz
Akcionog plana za borbu protiv korupcije i organizovanog kriminala i dostavljenog
zahtjeva obavještavamo Vas da je Uprava policije, Sektor kriminalističke policije
27.09.2007. godine zaključio sporazum sa operaterom telekomunikacionih usluga M-
telom.

Kopije ovog dokumenta ne možemo dostaviti iz razloga što se radi o dokumentu koji je
označen stepenom tajnosti «strogo poverljivo».

S poštovanjem,



Police Directorate
Division for Planning, Development and Analytics
09 no:051/08-3353/2
Podgorica, 27 March 2008
NETWORK FOR THE AFFIRMATION OF NON-
GOVERNMENTAL SECTOR - MANS
Attn: Ms. Vanja Čalović, Executive Director

PODGORICA
RE: Your request for information number 08/7392-7393
from 05 February 2008
On the basis of the Law on Free Access to Information,
obligations of the Police Directorate arising from the
Action Plan for the fight against corruption and
organised crime and your request we hereby notify you
that the Police Directorate, that is the Criminal Police
Department concluded agreement with the
telecommunication services operator M-tel on 27
September 2007.
We cannot deliver copies of this document since the
document is classified as "strictly confidential".
Sincerely,

Head of Department,
Radovan Ljumović
/stamp and signature/

Response of the Police Directorate from 27 March 2008

On 05 February 2008, MANS requested a copy of the Agreement between the Police Directorate and telecommunication services operator which enabled links and connection with computer networks and databases of institutions and business entities for the purpose of data collection.

The Police Directorate, having responded only after the lawsuit for administrative silence had been filed, submitted an act on 27 March 2008 in which it notified us of having concluded agreement with the telecommunication services operator M-tel, but that such a document was classified as "strictly confidential" which was the reason why they could not deliver it to us.

MANS filed complaint with the Ministry of Interior and Public Administration stating that citizens had the right to know the scope and manners of exercising police powers. We indicated that the requested Agreement may not be the document classified as "strictly confidential" since that was in contravention with the law which defined confidential data¹²⁸.

The Ministry confirmed decision of the Police Directorate on 02 July 2008.

MANS filed lawsuit with the Administrative Court against decision of the Ministry in which, amongst other things, it stated that the Ministry did not refer to the exceptions laid down by the Law on Free Access to Information which is exclusively relevant in the event of denial of access to information, neither had it conducted the "harm test" laid down by law, meaning that it did not establish whether the disclosure of requested information would cause harm to a certain protected interest which is considerably bigger than the harm caused to the public interest as a result of non-disclosure of such information.

In the meantime and after filing the lawsuit against the Ministry, the Police Directorate passed a new act in which this time it classified the document as "secret".

¹²⁸Article 11 of the Law on Confidentiality of Data clearly defines that one of the following confidentiality markings may be assigned to data: "top secret", "secret", "confidential" and "restricted".

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA – MANS

- Izvršni direktor, Vanja Čalović -

PODGORICA

PREDMET: Vaši zahtjevi za dostavljanje informacija broj 08/7392-7293 od
05.02.2008. godine

Na osnovu Zakona o slobodnom pristupu informacijama, obavezama Uprave policije
Akcionog plana za borbu protiv korupcije i organizovanog kriminala i dostavljenog
zahtjeva obavještavamo Vas, da do 01.03.2008. godine:

- Sporazum sa M-tel-om zaključen je 27.09.2007. godine. Dokument je označen kao
tajan;
- Sporazum sa Poreskom upravom biće potpisan u narednom periodu (planirano
martu 2008.godine).

S poštovanjem,

POVODILAC
UPRAVA POLICIJE
Vanja Čalović

Police Directorate
Division for Planning, Development and Analytics
PROPERTY ADMINISTRATION 09 no:051/08-27718/2
Podgorica, 22 September 2008

NETWORK FOR THE AFFIRMATION OF NON-GOVERNMENTAL SECTOR - MANS
Attn: Ms. Vanja Čalović, Executive Director

PODGORICA

RE: Your requests for information number 08/7392-7383 from 05 February 2008

On the basis of the Law on Free Access to Information, obligations of the Police Directorate arising
from the Action Plan for the fight against corruption and organised crime and your request we
hereby notify you that until 01 March 2008:

- The Agreement with M-tel was concluded on 27 September 2007. The document is classified as
"secret".
- The Agreement with Tax Administration will be signed in the forthcoming period (it is planned
for March 2008).

Sincerely,

Head of Department
Radovan Ljumović
/stamp and signature/

Response from Police Directorate from 22 September 2008

Almost nine months after filing the lawsuit, the Administrative Court rendered judgment on 09 April 2009 by which it annulled decision of the Ministry of Interior and Public Administration for procedural reasons¹²⁹.

Proceeding upon the judgment of the Administrative Court, the Ministry ordered the Police Directorate on 20 July 2009 to “submit to this Ministry the copy of acts referred to in MANS’ request from 05 February 2008 immediately or within eight days at the latest from the day of receipt of this decision”.

Since neither the Police Directorate nor the Ministry delivered the Agreement to us, MANS filed new complaint with the Ministry. The next day we also filed complaint with the Protector of Human Rights and Freedoms.

After more than two years of process duration and numerous pressures exerted by MANS by using all the available legal mechanisms, the Ministry of Interior and Public Administration finally delivered decision on 28 May 2010 by which it allowed MANS to have access to the requested Agreement after it paid for the cost of proceedings.

MANS made the above mentioned payment in a timely manner, however the Ministry failed to deliver the copy of the Agreement even after that. In verbal communication between MANS representatives and competent staff in the Ministry we were notified of all kinds of different reasons as to why copies of the Agreement had not been delivered in the envisaged time frame. Amongst other things, we were told that the delay was caused by annual leaves of the Ministry staff responsible for responding to the requests for free access to information.

Finally, MANS received copy of the Agreement on 10 November 2010.

Accompanying act, which was delivered to MANS together with the Agreement, clearly indicated that the Police Directorate itself stated that it had assigned “strictly confidential” and “secret” markings to the Agreement on access to databases of the telecommunications operator M-tel in an illegal manner. However, we are not familiar whether someone was held accountable for such an illegal activity.

¹²⁹ The court believed that the challenged decision had been passed with substantial breach of rules of administrative proceedings since enacting terms of the decision were in contradiction with the statement of reasons. In fact, the Ministry rendered decision on the request in the enacting terms, while it is concluded from the statement of reasons that it rendered decision upon complaint.

Crna Gora
Vlada Crne Gore
UPRAVA POLICIJE
Odjeljenje za planiranje, razvoj i analitiku
09 Br: 051-12040
Podgorica, 11.04. 2010. godine

10/7392-7393
11. 10. 2010

MINISTARSTVO UNUTRAŠNJIH POSLOVA I JAVNE UPRAVE
Ministru, G- dinu, Ivanu Brajoviću

VEZA: Vaš akt 01 broj 051/10- 249/2 od 12.02.2010 godine

U prilogu akta dostavljamo Vam spise predmeta Mreže za afirmaciju nevladinog sektora – MANS, broj 08/ 7392 – 7393 od 05.02.2008 godine.

Obavještavamo Vas da je, na osnovu dopisa Sektora kriminalističke policije, da se radi o dokumentu koji je označen stepenom tajnosti "strogo povjerljivo", dostavljen odgovor MANS-u. U ponovljenom zahtjevu MANS-a odgovoreno je, da je document označen stepenom "tajno", iako nije sproveden postupak u skladu sa važećim zakonskim rješenjima.

Montenegro
Government of Montenegro
Police Directorate
Division for Planning, Development and Analytics
09 No. 051-12040
Podgorica, 11 April 2010

10/7392-7393
11 October 2010

MINISTRY OF INTERIOR AND PUBLIC ADMINISTRATION

Attn: Mr. Ivan Brajović, the Minister

RE: your act 01 number 051/10-249/2 from 12 February 2010

Attached to this document, we also deliver case files of the Network for the Affirmation of the Non-Governmental Sector- MANS, number 08/7392-7393 from 05 February 2008.

We hereby inform you that response was delivered to MANS on the basis of the letter received from the Criminal Police Department according to which this document was classified as "strictly confidential". It was responded, to a repeated request from MANS, that the document was classified as "secret" even though the procedure was not conducted in accordance with valid legal regulations.

Accompanying document delivered to MANS on 11 October 2010 together with the Agreement between Police Directorate and M-tel

2.2. Contents of the agreement

The Criminal Procedure Code which defines powers of the police in pre-trial proceedings and which also served as a basis for the Police Directorate and M-tel to sign the disputable agreement, lays down the following in paragraph 2¹³⁰:

“(1) If there are grounds for suspicion that a criminal offence which is subject to prosecution ex officio has been committed, the police shall take necessary measures with a view to discovering the offender, preventing the offender or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and items which may serve as evidence, and to gathering all information which could be useful for conducting the criminal procedure successfully.

“(2) In order to fulfil the duties referred to in paragraph 1 of this Article, the police may ... request from the legal entity delivering telecommunication services to check the identity of telecommunication addresses that have been connected at a certain moment.”

Article 7 of the mentioned agreement envisages the following:

“The competent body shall have access to all the necessary data and download them through the appropriate interface whenever that is possible and necessary. The request for necessary data shall be generated in an appropriate application by authorised staff of the competent authority. This application shall provide records of all the requests, while the competent authority shall provide the right of access to the application and legitimacy of the request in accordance with its own internal regulations.

If the operator is requested to provide data outside the envisaged interface, i.e. by submitting the request in writing, the operator is obligated to respond to the request as soon as possible, depending on the degree of urgency and needs of the competent authority.”

In this way, the Police Directorate ensured the possibility to have access to all the data in possession of M-tel without any control whatsoever, whereas in Article 8 it laid down the following:

„Equipment and appropriate interfaces installed by the operator should provide 24-hour access and download of necessary data to the competent authority: a) in real time at the moment of generating communication; b) after the processing performed by the operator; c) in standard form“.

2.3. Proceedings before the constitutional court

In parallel with the mentioned administrative proceedings and dispute described in the first part, MANS lodged initiative on 02 July 2008 to commence proceedings before the Constitutional Court for examining constitutionality of the Agreement that the Police Directorate concluded with M-tel.

Namely, even before disclosure of that document there existed reasonable doubt that the said Agreement gave police the power to, for instance, gain insight with different kinds of

¹³⁰Earlier Criminal Procedure Code (Official Gazette of RM 71/03 from 29 December 2003, 07/04 from 11 February 2004, 47/06 from 25 July 2006), Article 230. The new Criminal Procedure Code, from 18 August 2009 regulates powers of the police in the same way, in Article 257.

communication (intercepting SMS texts and the like) which constitutes violation of the right to privacy guaranteed by the Constitution of Montenegro and European Convention on Human Rights¹³¹.

Therefore, MANS proposed to the Constitutional Court to commence the proceedings for examining constitutionality of the provision from Article 230 paragraph 2 of the Criminal Procedure Code and measures set forth in the Action Plan for the fight against corruption and organised crime which lays down for the police to establish links with telecommunications operators, due to its incompliance with Article 40 of the Constitution of Montenegro¹³² and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹³³.

It was indicated in the initiative which was filed with the Constitutional Court that the European Court for Human Rights established the following principles in its case law which are relevant for interpretation of the right to privacy in relation to the power of the police to gain insight into the lists of telephone calls:

- a. Lists of telephone calls, i.e. information on the date and duration of telephone calls and separately on dialled numbers are considered to be »an integral element of the telephone communication« and as such they enjoy protection within the right to privacy from Article 8 paragraph 1, in the same way like the contents of the telephone calls enjoy protection against illegal interception. In addition, classification of information on telephone calls enjoys protection under Article 8 paragraph 1, regardless of the fact whether the information was actually disclosed or used against a specific person in court or disciplinary proceedings.¹³⁴
- b. »In the context of covert surveillance measures or interception of communications by public authorities, domestic laws should ensure protection of individuals against arbitrary jeopardising of their rights under Article 8 of the Convention due to the lack of public control and the risk of abuse of powers.¹³⁵«. **The Law must be sufficiently clear** in terms to give citizens an adequate indication as to the circumstances in which public authorities are empowered to resort to this secret and potentially dangerous jeopardy of the right to the respect for private life and correspondence and the conditions under which they may be undertaken¹³⁶.« **»The Law must be sufficiently clear in defining the scope of powers** delegated to competent authorities and the manner of their exercise, having in mind the legitimate goal of the specific measure, so as to provide appropriate protection to the individual against arbitrary jeopardy of rights¹³⁷.«

¹³¹ At the moment of filing the initiative and constitutional complaint with the Constitutional Court, MANS did not possess data on what kinds of information the Police Directorate may obtain from M-tel, but later on, after disclosure of the Agreement it became clear that the Police Directorate might have had access to all the data possessed by M-tel, which were deemed relevant by the police.

¹³² Article 40 of the Constitution of Montenegro: "Everybody shall have the right to respect for his/her private and family life".

¹³³ Article 8 of the European Convention: „Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.“

¹³⁴ *Copland v. the United Kingdom*, 2007, paragraph 43; *Malone v. the United Kingdom*, 1989, paragraph 87; *Valenzuela Contreras v. Spain*, 1996, paragraph 47

¹³⁵ *Halford v. the UK*, 1997, paragraph 49

¹³⁶ *Malone v. the United Kingdom*, 1989, paragraph 67

¹³⁷ *Malone v. the United Kingdom*, 1989, paragraph 67

c. »There must be a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by Article 8 paragraph 1 of the Convention. Especially where the power of the executive is exercised in secret, the risk of arbitrariness is evident¹³⁸«.

d. Judgments¹³⁹ define the following minimum guarantees which must be laid down in law to avoid abuses of power by public authorities during interception and gaining insights with the list of telephone calls and information on dialled numbers:

- i. defining the category of persons whose telephones may be intercepted on the basis of court decision;
- ii. criminal offences which may lead to imposing such a measure, limiting the duration of telephone interception;
- iii. the procedure for preparing summary reports on intercepted calls;
- iv. precautions which should be undertaken so as to hand over intact and complete recordings for review of the court or defence attorney, and circumstances under which recordings may or must be erased or tapes destroyed, particularly when the defendant is acquitted by the court.

e. The European Court for Human Rights established that it is the practice of the police to obtain lists of telephone calls from the Post Office without the court order, that the law does not make it unlawful for the Post Office to supply information to the police, neither does it prescribe, which constitutes violation of Article 8 paragraph 1 of the European Convention¹⁴⁰.

Therefore, MANS filed constitutional complaint on the same day given that MANS is customer of M-tel services and thus it acquired status of a party to the proceedings.

On 13 September 2010 the Constitutional Court delivered decision dated 24 June dismissing the constitutional complaint and stating that the subject of deliberation of the Constitutional Court in the constitutional complaint proceedings may only be an act in which it was decided on concrete rights and obligations of the complainant. That it why the Court believed that it had no competence to decide on the very Agreement in the complaint proceedings.

U konkretnom predmetu, po ocjeni Ustavnog suda, nijesu ispunjene procesne pretpostavke za njegovo odlučivanje, u smislu odredbe člana 48 Zakona o Ustavnom sudu. Naime, predmet odlučivanja Ustavnog suda u postupku po ustavnoj žalbi može da bude samo konkretan pojedinačni akt kojim se odlučuje o konkretnim pravima i obavezama podnosioca žalbe. Stoga, Ustavni sud nije nadležan da odlučuje o radnjama, odnosno postupanju Uprave policije u postupku zaključivanja Sporazuma sa „M-tel“-om kao ni o samom Sporazumu. Iz navedenog proizilazi da su ispunjeni uslovi, iz člana 28 tačka 6 Zakona o Ustavnom sudu da se žalba odbaci.

Na osnovu iznijetih razloga, riješeno je kao u izreci.



¹³⁸ Malone v. the UK, 1989, paragraph 67

¹³⁹ Kruslin v. France, 1990 and Huvig v. France, 1997, and Venezuela Contreras v. Spain 1996, paragraph 47

¹⁴⁰ Malone v. the United Kingdom, 1989, paragraph 87,

In this specific case, according to the Constitutional Court, procedural prerequisites for its deliberation are not fulfilled within the meaning of the provision from Article 48 of the Law on Constitutional Court. Namely, the subject of deliberation of the Constitutional Court in the constitutional complaint proceedings may only be a specific individual act in which it is decided on specific rights and obligations of the complainant. Therefore, the Constitutional Court has no competence to decide on actions, i.e. acting of the Police Department in the procedure of concluding the Agreement with M-tel and on Agreement itself. It is concluded from the above mentioned that requirements from Article 28 sub-paragraph 6 of the Law on Constitutional Court for dismissal of the complaint have been fulfilled.

For the above mentioned reasons, it was decided as stated in enacting terms.

President of the Constitutional Court
Mr. Milan Marković, PhD
/stamp and signature/

Decision of the Constitutional Court from 24 June 2010

However, the Constitutional Court has still not rendered decision on initiative for the review of constitutionality of disputable Article of the Criminal Procedure Code which had served as a basis for concluding the Agreement. That initiative was filed almost three years ago, on the same day as the constitutional complaint.

2.4. Application with the European court for human rights

After the Constitutional Court had dismissed our constitutional complaint and failed to examine the initiative for constitutional review of the law over the period of almost three years, MANS lodged application with the European Court for Human Rights on 14 March 2011.

It was stated in the application that the decision of the Constitutional Court on our constitutional complaint violated the right to the protection of private life, family, home and correspondence laid down in Article 8 paragraph 1 of the European Convention according to which everyone is entitled to the respect for his private and family life, his home and his correspondence.

It was emphasised that proceedings before the Constitutional Court led to violation of Article 6 paragraph 1 of the Convention according to which everyone, in the determination of his civil rights, is entitled to a hearing within a reasonable time by an independent and impartial tribunal established by law.

We stated that such conduct of the Constitutional Court violated our right to an effective legal remedy from Article 13 of the Convention, since legal remedies for accelerating the proceedings and award of damages for the violation of the right to a trial within a reasonable time under the Law on the Protection of Right to a Trial within Reasonable Time were not applicable to the proceedings before the Constitutional Court.

We also stated in the application that we believed that the Constitutional Court was not independent and impartial court given that its composition and procedure for election of its members failed to provide necessary guarantees of independence which was also noted by Venice Commission of the Council of Europe in its Opinion on the Constitution of Montenegro from 20 December 2007 (no. 392/2006).

The proceedings before the European Court for Human Rights are pending.

2.5. Proceedings before the basic court in podgorica

At the beginning of the year MANS also commenced proceedings before the Basic Court in Podgorica against the Police Directorate and M-tel given that MANS itself is a customer of services provided by this telecommunications operator.

For that reason, our rights to privacy guaranteed by the Constitution and international treaties are in jeopardy which is why we filed lawsuit with the Basic Court in Podgorica requesting that the Agreement between the Police Directorate and M-tel be declared null and void as it is incompliant with the Constitution and international regulations. These proceedings are still pending.

2.6. Reaction of the agency for personal data protection

After the media reported that MANS had filed lawsuit with the Basic Court in Podgorica at the beginning of 2011 against the Police Directorate and M-tel on grounds of unauthorised disposal of citizens' data, the Agency for Personal Data Protection of Montenegro finally conducted the procedure to determine whether data exchange between the Police Directorate and M-tel was in accordance with the Law on Personal Data Protection.

On 28 March 2011 the Agency passed decision on ordering M-tel to stop supplying Police Directorate with personal data, stating that the Agreement was not in accordance with the Law on Electronic Communications, CPC and Law on Personal Data Protection.



br.

Podgorica, 28.03.2011.god.

Na osnovu člana 71., stav 1, tačke 1 i 4 Zakona o zaštiti podataka o ličnosti (Sl.List CG br. 79/08 i 70/09), vezano za potpisani Sporazum o uzajamnoj saradnji, br. 5419 od 27.09.2007. godine, između društva za telekomunikacije MTEL.d.o.o. i Uprave policije, Agencija donosi

RJEŠENJE

Naređuje se Rukovaocu zbirke ličnih podataka, društvo za telekomunikacije MTEL d.o.o. da u roku od 5 dana otkloni nepravilnosti u obradi ličnih podataka i prekine sa davanjem na korišćenje ličnih podataka korisniku ličnih podataka suprotno odredbama Zakona o zaštiti podataka o ličnosti i Ustava Crne Gore.

Montenegro
Agency for Personal Data Protection
No.
Podgorica, 28 March 2011

Under Article 71 paragraph 1 sub-paragraphs 1 and 4 of the Law on Personal Data protection (Official Gazette of Montenegro 79/08 and 79/09) in relation to the Agreement on Mutual Cooperation, no. 5419 from 27 September 2007 signed between the telecommunications company M-tel Ltd. and Police Directorate, the Agency issues the following

DECISION

The handler of the collection of personal data, telecommunications company M-tel Ltd, is hereby ordered to eliminate irregularities in personal data processing and to stop supplying personal data to the user of personal data as it is in contradiction to provisions of the Law on Personal Data Protection and Constitution of Montenegro.

Decision of the Agency for Personal Data Protection from 23 March 2011

After M-tel had filed complaint, the Council of the Agency for Personal Data Protection issued a second instance decision on 12 April 2011 dismissing their complaint as groundless and confirmed decision of the Agency from 28 March 2011.

3. ACCESS TO DATA ON IMPLEMENTATION OF REFORMS

This chapter contains data on how the institutions responsible for anti-corruption reforms in Montenegro implement the Law on Free Access to Information.

Since adoption of the Action Plan for the fight against corruption and organised crime in 2006 MANS has monitored its implementation by filing requests for free access to information with the institutions that are responsible for implementing measures set forth in that document.

Since the beginning of implementation of the new Action Plan for implementation of the Strategy for the Fight against Corruption and Organised Crime MANS has filed 1,400 requests for information, whereas institutions delivered to us every fourth requested data.

Data show that a worryingly large number of institutions still violate the Law, particularly in terms of deadlines for delivery of responses, or they ban access to the requested data, ignore requests or decisions of second instance authorities.

It is necessary to improve access to information on anti-corruption reforms conducted by public authorities, particularly through proactive publication of as much information as possible on websites. That would reduce administrative pressure on institutions to deliver responses to requests for information, while more information would be available to citizens.

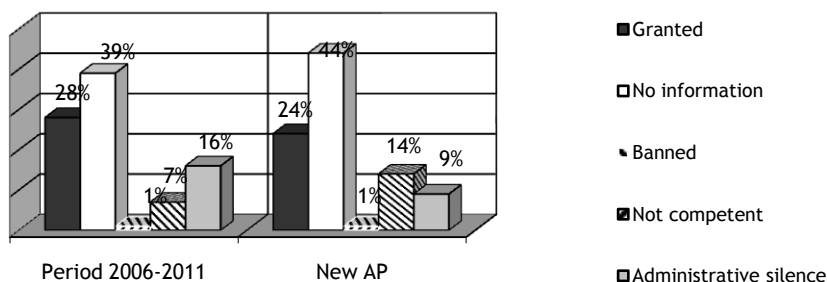
3.1. Administrative proceedings

In the period of validity of the earlier Action Plan, MANS filed more than 11,000 requests for access to information in which we requested information on implementation of measures in the period from 2006 until the end of 2009. Since entry into force of the new Action Plan on 28 July 2010, MANS has filed additional 1,400 requests in order to obtain information on implementation of the total of 266 measures set forth in the Action Plan.

Requests were filed with the institutions which were defined as competent authorities by the Action Plan adopted by the Government. Requests were formulated on the basis of indicators set forth in the Action Plan which serve to evaluate performance of a specific activity.

Over the course of implementation of the new Action Plan, institutions delivered every fourth requested document, 6% of requested information were already published, in 14% of cases institutions stated they had no competence and in 44% of cases they did not have requested information. Institutions banned access to information in 1% of cases, while in 9% of cases they did not deliver response.

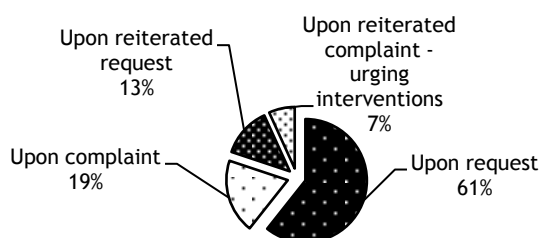
It means that in 44% of cases institutions stated they had no data on performance indicators related to the implementation of reforms for which they themselves were responsible and which were connected with the fight against corruption and organised crime.



Graph 43: Responses to requests for access to information

Even though the percentage of requests to which institutions did not respond considerably reduced in comparison to the previous period, institutions evidently still fail to comply with deadlines prescribed by the Law on Free Access to Information which lays down that the institution shall decide on request in accelerated procedure, within 8 days at the latest from the day of filing the request.

Even when we receive responses before filing the lawsuit, that is before administrative proceedings, around 60% of responses are delivered to our requests, while the remaining ones are delivered only after complaints and urging interventions. Due to violation of the law by institutions, the period between filing the request and receipt of the response in some cases takes several months, even before the lawsuit has been filed.



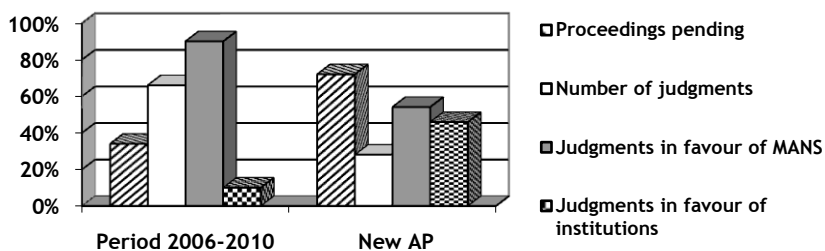
Graph 44: Received responses by phases of administrative proceedings

There is an evident growth in responses to requests where institutions notify us about not having information on fulfilment of indicators for evaluation of reforms for which these institutions are responsible. From 2006 until the beginning of monitoring the new Action Plan, we received such responses to 39% of our requests, whereas since implementation of the new Action Plan started it has been the case with 44% of requests.

3.2. Administrative dispute

Since the beginning of monitoring the Action Plan in 2006, MANS commenced dispute proceedings before the Administrative Court for more than 1,000 requests for free access to information and most often on grounds of administrative silence. Since the beginning of monitoring the new Action Plan alone, MANS filed lawsuits for more than 200 requests for access to information.

So far the Administrative Court ruled in 28% of cases and more than a half of judgments were rendered in favour of MANS. This percentage of judgments in favour of MANS will see further increase having in mind the previous practice of the Administrative Court once all administrative disputes are finished, since the procedure is still pending for more than 70% of lawsuits.



Graph 45: Lawsuits filed on grounds of requests for access to information

3.3. Data by institutions

The Judicial Training Centre delivered response to each request, of which in 42% of cases it delivered requested information, while in 52% it notified us that it was not in possession of requested information.

Other institutions which respond to requests more frequently are the Ministry of Foreign Affairs and European Integration (83%), Ministry of Health(74%), Customs Administration (60%).

On the other hand, the Ministry of Economy is the one which most frequently ignores requests for information (administrative silence 55%). That institution allowed access to information for only four requests (19%), whereas in almost every third case it claimed that it was not in possession of requested information. Such conduct of the Ministry of Economy is particularly problematic given that MANS submitted only 21 requests for access to information to this institution in the period of monitoring the new Action Plan.

The Police Directorate is responsible for implementation of the majority of measures set forth in the Action Plan and therefore the majority of requests have been submitted to that institution since the beginning of monitoring the Action Plan - 227.

The police did make certain progress compared to the previous period when it almost never delivered responses to requests. **Now the police deliver responses to every tenth request for information** which is why we are forced to file complaints with the second instance authority, the Ministry of Interior and Public Administration. **The Ministry ignores almost every third complaint of transparency of the police work which is why we are forced to commence court proceedings.**

Other institutions which are characterised by higher percentage of administrative silence are: the Ministry of Sustainable Development and Tourism (39% of requests filed with this institution), the Public Procurement Directorate (25%) as well as the Ministry of Transport and Maritime Affairs (22%).

The Ministry of Interior (57%), Ministry of Finance (33%) and Tax Administration (24%) are among institutions which state that they have no competence to deliver responses on outcomes of reforms for which they are responsible themselves.

The Parliament of Montenegro responded to us that it was not in possession of a single piece of information on outcomes of reforms for which it was responsible under the Action Plan, whereas the same response was given by the Ministry of Justice in 98% of cases, Supreme State Prosecutor's Office in 98% and Supreme Court in 94% of cases. **Interestingly enough, the Minister of Justice is the President of the National commission which monitors**

implementation of the Action Plan, while heads of judiciary and prosecution office are members of the Commission, and still their institutions have no information on outcomes of reforms for which they are responsible under the Action Plan - and whose implementation is supervised by their heads.

3.4. Recommendations for improving access to data on reforms

Having in mind numerous problems in accessing information on implementation of measures and fulfilment of obligations by institutions as defined in the Action Plan for implementation of the Strategy for the Fight against Corruption and Organised Crime, it is necessary to do the following:

- Institutions should be proactive in publishing greater amount of information on implementation of measures set forth in the Action Plan on their websites;
- Critical institutions for implementation of measures set forth in the Action Plan, which have large administrative capacities such as the Police Directorate, Supreme State Prosecutor, Supreme Court, Parliament of Montenegro, Tax Administration and Customs Administration, Ministry of Interior and other ministries should publish reports on implementation of the AP every month on their websites.
- All local government units should publish monthly reports on implementation of measures set forth in the AP on their websites and submit them to the Union of Municipalities.
- Small scale institutions, with weaker administrative capacities, which are responsible for small number of measures set forth in the AP should publish reports on implementation of measures set forth in the AP on their websites every three months.
- It is necessary for all the persons responsible for reporting on the Action Plan to review the document and performance indicators for specific activities together with their superiors so as to reduce the number of measures for which they state that they have no competence and also to reduce the number of cases in which institutions have no information on implementation of their own reforms.

4. REPORT ON IMPLEMENTATION OF THE ACTION PLAN FOR THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME

This chapter contains information on outcomes of envisaged reforms in the field of the fight against corruption and organised crime. It gives a review of the execution of the Action Plan for Implementation of the Strategy for the Fight against Corruption and Organised Crime in 2010.

This Action Plan was adopted by the Government on 29 July 2010 and the document contains goals, measures, responsible institutions, indicators and time frames for implementation of activities by all the relevant state institutions with the aim of improving the fight against corruption and organised crime in the period from 2010 until 2012. Implementation of the Action Plan is monitored by the National Commission which consists of representatives of institutions responsible for implementation of activities set forth in this document and MANS representative is also its member.

Even though the Action Plan was adopted only in mid-2010, this report contains information on activities of institutions throughout entire 2010 in order for it to be comparable with the official report which is adopted by the National Commission.

The report was prepared on the basis of information delivered to MANS on 09 March 2011 in accordance with the Law on Free Access to Information by institutions which are obligated to implement measures¹⁴¹. The document also contains information from reports submitted by the majority of competent institutions to the National Commission. That is to say, this chapter contains data on implementation of reforms which were obtained from institutions, whereas MANS had no means to check accuracy of these data.

Out of the total of 266 reform measures set forth in the Action Plan, only 13% were implemented in 2010, implementation of almost half of envisaged measures began, while implementation of around 40% did not begin at all.

The majority of reforms implemented through 2010 were of administrative nature which is why they could not make considerable contribution to the actual reduction of the level of corruption and organised crime in Montenegro. They were mainly related to the training of civil servants, purchase of equipment and provision of office space, which had also been done by institutions over the past years. Institutions also concluded agreements with state and international institutions and foreign countries and adopted a considerable number of by-laws. Some of the institutions conducted media campaigns to raise public awareness of corruption.

On the other hand, implementation of critical activities which would contribute to the achievement of considerable outcomes in the fight against corruption and organised crime has not started yet. The Parliament of Montenegro has not established yet a special working body which would be engaged in the fight against corruption and organised crime, neither is full harmonisation of domestic legislation with conventions in the field of organised crime completed. The Law on Prevention of Conflict of Interest has not been amended even though for years it has been recognised as a problematic one by all the relevant international organisations. Amendments to regulations did not lead to improvement of the protection of persons reporting corruption. Independence of the State Audit Institution has

¹⁴¹ The report was prepared on the basis of the database which contains data on indicators for each of the measures set forth in the Action Plan and is available at: <http://www.mans.co.me/wp-content/uploads/ap/podaci-iz-baze.pdf>

not been additionally strengthened by amending the existing legislation, while the independent body responsible for auditing the expenditure of funds from the European Union has not been established as well.

The report on the use, management and disposal of things and other assets belonging to Montenegro has not been prepared as well which is why it is still unknown what property is owned by Montenegro and how it is handled.

As for activities of bodies responsible for criminal prosecution and adjudication, there were no cases of permanent confiscation of property acquired in criminal offences of corruption and organised crime on the basis of enforceable court decisions, while the property valued at less than one million euros was temporarily frozen. Special investigative team conducted only four investigations and two financial investigations in 2010.

The Police Directorate did not prepare analysis of criminal scene in Montenegro, neither did it prepare report on impact of organised and serious crime from the region on Montenegro. In addition, Europol national unit has not been established yet, neither did the police establish criminal intelligence units in local branches.

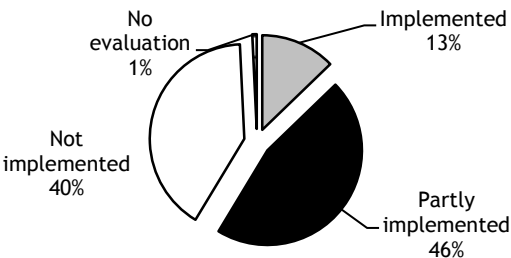
After three years, the National Commission finally accepted proposals from MANS and opened its sessions for public, while it also enabled citizens to submit complaints to this body. Curiously enough, the new arrangements were supported by those same members of the National Commission who previously had voted against MANS' proposals on several occasions. That finally established procedural grounds for the National Commission to be more efficient and active in oversight and coordination of the work of institutions in their implementation of reforms aimed at the fight against corruption and organised crime.

4.1. General data on implementation of the action plan

The new Action Plan for implementation of the Strategy for the Fight against Corruption and Organised Crime for the period 2010-2010 was adopted by the Government of Montenegro on 29 July 2010.

The Action Plan (AP) contains goals set forth in the Strategy which are related to 266 specific activities, competent authorities and time frames for implementation, as well as the indicators for monitoring the progress.

Out of the total of 266 measures set forth in the Action Plan, 34 have been fully implemented so far, 122 have been partly implemented, while 108 measures have not been implemented at all. Two measures, which are related to monitoring, have not been evaluated.¹⁴²

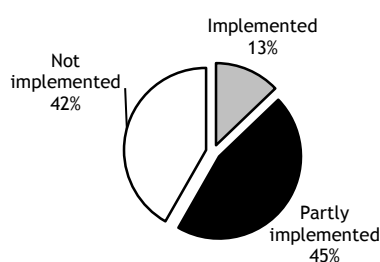


Graph 45: Level of implementation of measures set forth in the Action Plan

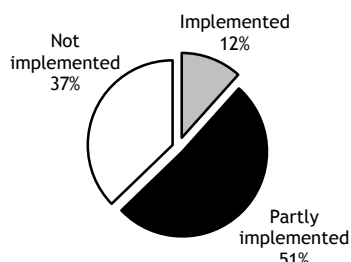
The Action Plan is divided in three fields: corruption, organised crime and monitoring.

¹⁴² Measures for preparation of the first report on implementation of the Action Plan and delivery of individual reports by institutions are not possible to evaluate since it is necessary for at least one reporting cycle by institutions and National Commission to pass.

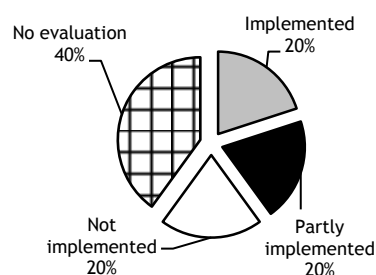
In the field of corruption, 28 measures were implemented, 99 were partly implemented and 91 measures were not implemented at all. The field of organised crime features five implemented measures, 22 partly implemented measures and 16 measures that were not implemented at all. In the field of monitoring, one measure was implemented, one was partly implemented and one was not implemented at all, while two were not evaluated.



Graph 46: Corruption



Graph 47: Organised crime



Graph 48: Monitoring

4.2. Corruption

The Action Plan classifies corruption related measures into three groups: priorities in suppressing corruption at the political and international level; fields of particular risk; and prevention of corruption in law enforcement agencies.

4.2.1. Priority in suppressing corruption at the political and international level

The field of priorities in suppressing corruption at the political and international level includes the total of 86 measures which are divided in 10 subfields. The majority of measures were implemented in the field of public finance. On the other hand, not a single measure was implemented in the total of six fields.

Subfield of priorities in suppressing corruption at the political and international level	Implemented	Partly implemented	Not implemented
Oversight role of the Parliament and implementation of international standards	0	2	4
Financing of political parties and electoral processes	1	1	4
Prevention of conflict of interest	1	7	3
Integrity	0	5	9
Free access to information	0	2	3
Protection of persons reporting corruption	0	6	3
Public finance	4	3	8
State owned property	1	2	1
Capital market	0	2	9
Private sector	0	4	1

Table 12: Review of implementation of measures in the field of priorities in suppressing corruption at the political and international level (by subfields)

Oversight role of the Parliament and implementation of international documents and standards

Out of the total six measures, not a single measure was implemented in this part, whereas two were only partly implemented.

In the reporting period the Parliament of Montenegro failed to prepare report on the oversight role of the Parliament and implementation of international instruments and standards, neither has it established cooperation with the National Commission for the Fight against Corruption and Organised Crime and other bodies defined in this Action Plan (AP). The Parliament has not submitted data on the increase in the number of expert associates aimed at building capacities for implementation of oversight mechanisms, but it is emphasised that the Parliament applied oversight mechanisms on a regular basis. As a result of implementation of oversight mechanisms, the Parliament issued seven recommendations to five institutions last year, however there is no data as to whether these recommendations have been fulfilled.

As for harmonisation of legislation with international standards in the field of the fight against corruption and organised crime, the Ministry of Justice, Ministry of Interior and Directorate for Anti-Corruption Initiative analysed the level of harmonisation of four laws¹⁴³ through the consultation process with GRECO, but not a single law has been amended pursuant to GRECO recommendations. Montenegrin institutions failed to prepare their own reports on the level of harmonisation of domestic legislation with international standards in the field of corruption and organised crime, even though they were bound to do so by the Action Plan. There were no additional activities on harmonisation of domestic regulations with conventions in the field of organised crime.

Financing of political parties and electoral processes

In this part, one measure was implemented, one was partly implemented and four were not implemented at all.

Harmonisation of electoral laws with the Law on Financing of Political Parties has not been finished yet. In the reporting period, the State Audit Institution did not organise trainings for acquiring specialised knowledge for auditing financial operations of political parties, independent lists and candidates. Reports on financial operations of political parties, independent lists and candidates were published on the State Electoral Commission website on a regular basis. Analysis of legislative framework for the work of the State Electoral Commission was not prepared, while this institution adopted the new Code of Ethics and Rules of Procedure. Implementation of the Code of Ethics has not been subject to monitoring.

Prevention of conflict of interest

In this part, one measure was implemented, seven measures were partly implemented, whereas three measures were not implemented at all.

Harmonisation of the Law on Prevention of Conflict of Interest with international documents has not been finished yet. Reports on revenues and assets in 2010 were submitted by 97% of state and local public officials, whereas 462 misdemeanour proceedings were

¹⁴³Criminal legislation, Law on Prevention of Conflict of Interest, Law on Financing of Political Parties and Law on Public Procurement.

initiated against public officials as a result of their failure to submit reports to the Commission for the Prevention of Conflict of Interest, where the total fines amounting to EUR 22,850 were imposed.

The Commission for Prevention of Conflict of Interest did not recruit new staff, but it acquired the missing technical equipment. The Commission members and staff employed in the technical service participated in three seminars and three international conferences.

In 2010 the Commission members signed an agreement on cooperation with domestic institutions, that is with the Tax Administration with the aim of more efficient verification of data on revenues and assets of public officials. There are no information on implementation of the agreement mentioned above, neither were reports on its implementation prepared. In the same period, the Commission signed the agreement on cooperation with competent institutions in Croatia and Bulgaria.

Last year, the Commission organised the total of 17 trainings for public officials, NGOs and media, while trainings for civil servants and state employees were not organised. The Commission also implemented five out of 14 programmes which, according to their opinion, contribute to better implementation of laws in the field of the prevention conflict of interest.

Integrity

In this part there were no implemented measures, five were partly implemented, whereas nine were not implemented at all.

Amendments to the Law on Civil Servants and State Employees and Amendments to the Law on Salaries of Civil Servants and State Employees have not been adopted yet, while integrity plan has been adopted by only three institutions.¹⁴⁴ The total of 81 specialised trainings were organised in the reporting period with the aim of acquiring new knowledge and skills by employees in state institutions in the field of integrity strengthening. Nine Rulebooks on internal organisation and job descriptions of state bodies were innovated in 2010, the analysis was prepared and objective criteria were defined for promotion and awarding of staff, but there is no data on whether this led to the reduction of the outflow of skilled personnel. The Code of Ethics of civil servants and state employees was not revised. Four trainings on the Code of Ethics for civil servants and state employees were delivered in the same period, while for the time being it is only the employees of Customs Administration who started to fulfil obligation of signing the declaration of acceptance of the Code of Ethics.

The Ministry of Interior and Public Administration did not prepare Annual Report on implementation of the Codes of Ethics in 2010. Decisions and ethical dilemmas on these grounds were not published on the Ministry of Interior website.

The field of lobbying still remains unregulated by norms¹⁴⁵, therefore there has been no increase in the number of staff in the Directorate for Anti-Corruption Initiative and Ministry of Finance¹⁴⁶, while technical conditions for more efficient implementation of the Law on Lobbying have not been improved yet.

¹⁴⁴The Directorate for Anti-Corruption Initiative, Ministry of Finance and Tax Administration

¹⁴⁵Deadline for adoption of the Law on Lobbying is the second quarter of 2011.

¹⁴⁶Capacity building of DACI and MF for efficient implementation of the Law on Lobbying through increase in the number of staff and provision of technical conditions is envisaged for the second quarter of 2011.

Free access to information

In this part there were no implemented measures, two were partly implemented, while three were not implemented at all.

Amendments to the Law on Free Access to Information (FAI) that would provide introduction of the second instance procedure and clearly define misdemeanour accountability have not been drafted and adopted yet. The Human Resources Management Authority organised four trainings for staff responsible for responding to the requests for FAI. Only one institution stated that the number of second instance cases reduced in relation to the responded requests.

Only two institutions regularly submit report on implementation of the Law on FAI to the second instance authority which is responsible for oversight. According to the data from the practice of MANS, implementation of the Law on FAI by state bodies has not reached satisfactory level yet¹⁴⁷.

The total of 11 state bodies and institutions reported that they had updated their websites on a regular basis and that they had established electronic system to serve citizens and business entities. There is no information from the Ministry of Culture whether the total number of requests for information has reduced in comparison to the previous year, while MANS data indicate that the number of requests in 2010 got reduced by 69% compared to 2009.

Protection of persons reporting corruption

There were no implemented measures, six were partly implemented, whereas three were not implemented at all.

Analysis was prepared on the need to adopt a special law for protection of persons reporting corruption (“whistle-blowers”) where it was concluded that protection of these persons would not be regulated by a special law, but with amendments to the existing laws instead. There were no amendments to the existing legislative framework which would enhance protection of persons reporting corruption, as it was set forth in findings from the analysis.

Trainings for 60 participants from state institutions were organised in order to educate persons responsible for intake and processing of corruption reporting cases and protection of persons reporting corruption. Reports on implementation of the existing measures for the protection of persons reporting corruption which would include statistical indicators were not prepared. Institutions state that there were no complaints of suffering consequences as a result of corruption reporting which was why the analysis of effectiveness of the existing protection measures was not prepared.

Mechanisms for corruption reporting within the organisation itself are determined and available only in Tax Administration, but there were no corruption cases reported through this mechanism. The other institutions are still to establish these mechanisms as well. In state bodies there were no corruption reporting cases through the mechanism of reporting to the second instance body since such a mechanism has not been established at the central level yet.

¹⁴⁷In 2010 we submitted more than 5,500 requests for information, of which access to information was granted in some one third of cases. Administrative silence still remains at the high level, whereas institutions declare that they have no competence or claim that they possess no information in more than one third of cases.

Nine information campaigns and two annual public opinion surveys were organised to promote channels for corruption reporting and protection mechanisms. Reports on good practice in corruption reporting were not prepared, neither were special public campaigns on this topic organised.

Out of the total of 603 cases of corruption reporting, 429 were reported to MANS, 140 to the Directorate for Anti-Corruption Initiative, while only 34 cases were reported to the Police Directorate.

Public finance

In this part, four measures were implemented, three were partly implemented, whereas implementation of eight measures did not begin at all.

Proposal for the Law on Amendments to the Law on State Audit Institution (SAI) was not drafted. Regulations were not drafted for establishment of the audit body that would be responsible for auditing IPA funds and consequently it was not set up.

The number of audits increased in the reporting period compared to 2009.

In the above mentioned period, this institution held only one press conference. There is no information as to whether the number of irregularities in public spending has decreased, but SAI noted that 138 irregularities had been identified in audits conducted so far and recommendations for their elimination were issued as well. SAI conducted just one controlling audit in relation to the regularity of the procedure of opening of accounts by spending units in commercial banks and regularity of their operations, stating that the majority of earlier recommendations had not been fulfilled.

SAI prepared recruitment plan by 2012 which served as a basis for announcing vacancies for new state auditors which helped instaff capacity building.

The Tax Administration continuously publishes four types of reports on tax revenues and number of registered tax payers and they are available on their website.

Internal audit of budget funds allocated to budget beneficiaries was not conducted since the special internal audit units in budget beneficiaries were not established, which is why internal auditors were neither recruited nor trained.

In cooperation with the Human Resources Management Authority, the State Audit Institution organised risk management trainings for the management staff and civil servants working in all the spending units.

State owned property

One measure was implemented, two were partly implemented, whereas one was not implemented at all.

Report on the use, management and disposal of things and other assets belonging to Montenegro and other affairs relating to asset protection has not been prepared.

In order to implement provisions of the Law on State Owned Property, the Ministry of Finance in cooperation with the Property Administration adopted six by-laws, whereas the Directorate also adopted the Rulebook on internal organisation and job descriptions. One new employee was recruited to work in the Property Administration on the basis of this

Rulebook, while there was no recruitment in the office of the Protector of Property and Legal Interests. The Directorate and the Protector did not organise trainings for the newly employed.

The Property Administration did not acquire any equipment, while the Protector acquired technical devices and motor vehicles.

Capital market

There were no implemented measures, whereas only two were partly implemented.

Laws on securities, investment funds, takeover of joint stock companies, voluntary pension funds and insurance are not harmonised with relevant directives of *Acquis communautaire*. The custody licensing system for operating investment funds and supervision by a foreign custody were not put in place, while procedure for ownership transfer on the basis on non-market transactions and termination of contracts was not specified.

Information system for securities is currently being upgraded. Securities Commission banned access to information on signed bilateral memorandums of understanding with international partners which is why there is no information on how this cooperation goes, while this Commission did not sign any memorandums of understanding with domestic institutions, neither did it prepare reports on implementation of memorandums signed so far.

The Rulebook on contents, time frames and manner of publication of financial reports of securities' issuers was amended in 2010 and public information booklet was prepared featuring over 8,000 financial reports of companies which are available on the Commission website. In the same period, the Ministry of Finance imposed 79 sanctions to the companies for their failure to act in line with reporting obligations.

Private sector

Four measures were partly implemented, whereas implementation of one has not begun yet.

The new Action Plan for reform of the ease of doing business has not been adopted yet. Report on implementation of the Law on Improvement of Business Environment of this institution has also not been adopted yet, but some information on law implementation was delivered to the National Commission. Report on implementation of the Action Plan for the Regulatory Reform Strategy was not prepared as well. The Council for Regulatory Reform and Improvement of Business Environment held four sessions in 2010 where seven recommendations coming from private sector were accepted with the aim of improving business environment. Report on combating corporate corruption was not prepared by either of the competent institutions identified in the Action Plan, however six round tables were organised to discuss this topic and 18 recommendations were issued.

4.2.2. Fields of Particular Risk

Fields of particular risk contain 86 measures which are classified into seven subfields. The majority of measures were implemented in the field of education. On the other hand, not a single measure was fully implemented only in the public procurement field.

Fields of particular risk	Implemented	Partly implemented	Not implemented
Privatisation process	2	5	0
Public procurement	0	1	11
Urban planning	3	2	4
Education	4	10	10
Healthcare	2	6	3
Local government	1	8	3
Civil society, media and sports	2	3	4

Table 13: Review of implementation of measures in the fields of particular risk

Privatisation process

In this part, two measures were implemented and five were partly implemented.

The system for the control of investments in some privatised enterprises and execution of contractual obligations was put in place owing to engagement of the Faculty of Economics which will monitor implementation of some of the contracts, whereas working teams in the Privatisation Council were established for enterprises that are not included in the contract with the Faculty of Economics. In 2010 the Council prepared two reports on implementation of privatisation contracts which contain information on 25 privatised companies and projects. There is no information whether a single database on privatised enterprises was created.

The number of requests for information on privatisation contracts in the reporting period amounted to 1,100 of which the access to information was possible in the majority of cases. In that same period, the Administrative Court annulled decisions of the Ministry of Economy and Privatisation Council for more than 100 requests for information. Persons authorised to issue decisions on access to information in the field of privatisation had three trainings last year organised by the Human Resources Management Authority. During this period, the Privatisation Council published 29 media releases and invitations for tender on its portal. There were no public debates on plans and strategies for privatisation of strategically important enterprises.

The Parliamentary Commission for Monitoring and Control of Privatisation Procedures held six meetings at which it requested documentation for nine enterprises. The Commission did not hold consultative and control hearings, neither did it issue recommendations to the institutions in the field of privatisation.

Public procurement

There were no implemented measures, whereas one was partly implemented.

The new Law on Public Procurement was not adopted, instead it was only its draft that was prepared and consequently by-laws were not adopted as well. The Strategy for Development

of the Public Procurement System for the period 2011-2014 and job descriptions of positions in institutions responsible for oversight of the public procurement procedures were not prepared. List of public procurement staff in contracting authorities was not published, neither were reports on the work of help desk prepared.

The new group for reporting irregularities in the public procurement procedure was not established as well and consequently there was no reporting on its work, neither were regulations on establishing electronic public procurement system adopted. Programmes and defined training models for public procurement staff were not prepared, neither was the examination system for acquiring certificates established.

Urban planning

Three measures were implemented, two were partly implemented, whereas four were not implemented at all.

Proposal for the Law on Amendments to the Law on Spatial Planning and Construction has not been adopted yet.

In order to fill in envisaged job positions the Ministry of Sustainable Development and Tourism hired five new inspectors in 2010, but another 15 still need to be recruited. The Ministry provided incentive for the work of inspectors by approving additional remuneration of 30% to their salaries. Inspectors working in this ministry attended 16 trainings in the reporting period. Technical conditions for the work of inspectors have not been improved yet, but the procedure for the purchase of the missing equipment is in progress.

Procedures for reporting illegal construction activities are published on the Ministry website, along with cumulative reports and inspections' work plans. They are updated on a regular basis, but contain only numerical indicators. The Rulebook on internal organisation and job descriptions of the Ministry of Sustainable Development and Tourism envisages establishment of Internal Audit Division, however it still has not become operational.

Report on implementation of the Action Plan for the fight against corruption in the field of spatial planning and construction by the Government was not adopted in the reporting period.

Education

Four measures were implemented in this part, ten were partly implemented, and that same number was not implemented at all.

Competent institutions did not prepare reports on announced vacancies for recruitment and employment of staff in educational institutions and did not submit them to the Education Inspectorate, neither did this institution prepare a unified report on the new staff recruitment. In the reporting period the Ministry of Education did not submit reports of educational institutions on recruitment of trainees, they only provided information that they had approved recruitment of 239 trainees.

The Code of Ethics for education sector was not adopted, whereas one seminar was organised for 35 principals of educational institutions in order to train them on development of and compliance with the Code of Ethics. In the reporting period, 27 lectures, seminars and workshops on corruption were organised with the aim of capacity building of staff in educational institutions and these trainings were attended by 746 participants.

The Rulebook on criteria, manner, conditions and amount of the fee for exercising the right to accommodation and meals in dormitory, student loan, scholarships and co-payment was not innovated. Ranking lists on awarded pupil and student scholarships, loans and admission to dormitories are regularly published on the Ministry of Education and Science website, in the magazine "Educational Work" and in at least one daily.

In the framework of the curricula, 41 knowledge standards were developed in 2010, whereas during the same period 14 trainings were organised on testing criteria in which 425 teachers participated. There were 10 seminars on monitoring the quality of work, systems and knowledge testing in which 206 teachers participated. One centre for quality assurance in higher education was established at the University level, along with the teams for quality assurance in private higher education institutions.

Competent state bodies did not conduct media campaigns aimed at prevention of corruption in education and campaigns on objectivity in pupil and students grading were not organised as well. At the end of last year a special phone line was put in place for corruption cases reporting, but reports on its operations were not prepared since it had not been operational throughout 2010. Surveys on forms, causes and mechanisms for occurrence of corruption in educational sector were not conducted as well. In addition, there was no a single lecture, seminar or workshop for greater involvement of parents, lecturers and civil society in the process of planning and implementing measures for fighting corruption in educational system.

Working group responsible for monitoring implementation of the Action Plan for the fight against corruption in education includes a representative of the NGO sector, but there is no representative of parents. In the reporting period, two rulebooks were adopted more closely defining procedures for establishment of institutions and accreditation and reaccreditation of higher educational institutions, whereas the list of licensed primary and secondary educational institutions and university educational institutions is regularly updated on the Ministry of Education website.

In the past year it was only Tax Administration that prepared monthly reports on controls aimed at preventing non-licensed educational institutions to engage in educational activity, whereas Educational Inspectorate did not engage in these activities. Integrity plan was not prepared by educational institutions, neither did the educational institutions submit annual financial reports to the Ministry of Finance.

Sectoral Action Plan for the fight against corruption in education was harmonised with the National Action Plan at the end of 2010 and submitted to the National Commission.

Healthcare

Two measures were implemented, six were partly implemented, whereas three were not implemented at all.

Trainings on implementation of provisions from the Code of Ethics were organised in the healthcare sector. Eight disciplinary proceedings were initiated due to the violation of the Code of Ethics, against eight persons, but there is no data on their outcomes.

IT support was introduced in 148 healthcare institutions and that enabled efficient monitoring of performances of the healthcare system. Every month the Ministry of Health receives only the waiting list of patients for cardiovascular surgeries, whereas there is no information on the other waiting lists. This list is not updated on a daily basis and is not published on the Ministry of Health website, as it was envisaged.

Three by-laws were adopted with the aim of better implementation of the Law on Healthcare and Law on the Protection of Patient Rights. In the framework of the campaign on patient rights, the Ministry organised one information campaign and the protector of patient rights was appointed in all the healthcare institutions. Brochures for patients with information on their rights have not been prepared yet.

National survey on the healthcare system integrity was completed, but its results have not been made public yet. Regulations of professional norms and standards for improving the quality of work and patient safety have not been adopted as well.

In the reporting period, the Ministry of Health prepared one annual report on public procurement in health sector in 2009. In that same period, the Ministry submitted one six-month report to the National Commission on implementation of the sectoral Action Plan for the fight against corruption in the healthcare sector.

Local government

Only one measure was implemented, eight were partly implemented, whereas three were not implemented at all.

In the reporting period, workshops on harmonisation of local Action Plans for the fight against corruption with the National Strategy were not organised and there is no data as to whether any of the local APs have been harmonised in the meantime. During the same period, 12 reports on implementation of anti-corruption actions plans were prepared and four press conferences were held. According to the data delivered by local government units, free access to information was granted by 12 municipalities, but there is no data on the number of granted and denied requests in comparison to the number of total requests submitted, while on municipalities' websites there is also no data on published reports on implementation of the Law on Free Access to Information.

Report on the oversight of budget execution and earmarked spending of funds was submitted by 13 municipalities. In the same period, the State Audit Institution audited financial operations of only one municipality. There was no reporting whatsoever on the work of the Council for Development and Protection of Local Government in the past year. All the local parliaments adopted Codes of Ethics, whereas 11 municipalities also established Ethics Committees.

Seven public debates and round tables on draft laws and municipal acts were organised in the reporting period, but there is no data as to whether these acts were also adopted. The Ministry of Foreign Affairs and European Integration organised 11 trainings on writing the terms of reference in local government units, whereas donors approved 10 nominated projects in 2010.

There have been no promotional campaigns in local government units for the purpose of promoting the "empty chair" institute which enables non-governmental organisations to participate in the work of local parliaments. The Union of Municipalities, in cooperation with local government units, organised four joint meetings to improve cooperation between citizens and local government units, but there is no information on whether citizens and NGO sector submitted any initiatives and whether such initiatives were accepted.

Civil society, media and sports

Two measures were implemented in this part, three were partly implemented, whereas implementation of four measures did not begin at all.

Two joint activities were organised and more than 4,400 pieces of information material prepared in the reporting period in order to encourage greater and more efficient cooperation between state bodies and non-governmental organisations in the field of anti-corruption activities.

There is no information whether any financial report of some NGO was published on the Commercial Court website, neither was the analysis on NGO`s financial reports prepared. Legislative framework on the work of non-governmental organisations which is to improve transparency of their operations has not been amended.

The new Decree was adopted on criteria for determining beneficiaries and manner of distribution of the part of revenues from the games of chance to the non-governmental organisations, whereas the report of the Government Commission on the work, distribution and control of earmarked spending of funds allocated to NGOs was prepared in December.

In the reporting period there was no education of media on corruption and organised crime, as well as on investigative journalism, neither were reports on implementation of the journalism Code of Ethics prepared. Spokespersons of ministries and state administration bodies sent out 1,458 press releases and organised 75 conferences for journalists.

The total of 81 public debates and round tables on proposals for new laws were organised.

4.2.3. Prevention of corruption in law enforcement agencies

The field of prevention of corruption in law enforcement agencies contains the total of 48 measures divided into five sub-fields. Most of implemented measures relate to the area of preventive mechanisms for the fight against corruption in judicial authorities, and not a single measure was fully implemented in the field of criminal prosecution and confiscation of illicit gains.

Prevention of corruption in law enforcement agencies	Implemented	Partly implemented	Not implemented
Preventive mechanism for suppressing corruption in the police	1	6	3
Preventive mechanisms for suppressing corruption in judicial authorities	3	11	0
Criminal prosecution and confiscation of illicit gains	0	4	2
Coordination and data exchange	1	6	2
International cooperation	2	3	4

Table 14: Review of the implementation of measures in the field of prevention of corruption in law enforcement agencies (by subfields)

Preventive mechanism for suppressing corruption in the police

In this part, one measure was implemented, six were partly implemented, while three were not implemented at all.

The new Law on the Police and relevant by-laws were not adopted. In the said period, the Police Directorate did not amend the Rulebook on organisation and job descriptions, while the Ministry of Interior did.

In accordance with the Law on Border Control, the Police Directorate adopted one rulebook. The Strategy for Police Development and Functioning for the period 2011-2013 was adopted. In the reporting period, there was no increase in the number of staff members engaged in suppressing criminal offenses of corruption in the Police Directorate.

Necessary equipment for investigations and covert surveillance measures was acquired. In addition, funds for procurement of needed computer equipment were provided.

In the reporting period, 13 basic trainings in the field of suppressing corruption were delivered, attended by 126 participants, but there were no specialised trainings.

In order to eliminate conditions for corruptive behaviour in the police, one analysis of implementation of the Code of Ethics was prepared, while 19 disciplinary proceedings were initiated in the reporting period due to violation of the Code of Ethics. At the same time, the Ministry of Interior conducted 117 controls of the police work and detected 21 abuses. The Police Directorate did not conduct campaigns to promote corruption reporting and measures to protect citizens who report corruption in the police.

Preventive mechanisms for suppressing corruption in judicial authorities

In this part, three measures were implemented and 11 were partly implemented.

Four persons in charge of public relations are engaged in the Judicial Council, Prosecutorial Council, Public Prosecution Office and courts and they issued 32 press releases in the past year. Presidents of the Judicial Council and Prosecutorial Council held three press conferences in the reporting period. In the same period, the Supreme Court published an annual bulletin on its work. Websites of second instance courts in Montenegro are regularly updated, but they do not contain all judgments rendered by courts, but just the representative ones. The Supreme Court also organised two events known as "Open Doors".

In the reporting period, 29 controls of the work of judges and prosecutors were carried out. Analyses of regulations on disciplinary accountability of judges and prosecutors were not prepared, while analyses of the application of Codes of Ethics of judicial office holders were conducted by Judicial Council and Prosecutorial Council.

The Prosecutorial Council has normatively regulated and created central database on selection, evaluation, disciplinary sanctions and promotion of prosecutors, while the Judicial Council and Judicial Training Centre have not established these procedures yet. Transparent procedures for development of programmes for delivery of education and selection of lecturers were established by the Judicial Training Centre. Translations of some of the

decisions of the European Court of Human Rights are published on the website of the Supreme Court, but website of the prosecution office does not contain any.

Adequate and technically equipped office space for only one court in Montenegro has been provided so far. In the last year, more than 750 thousands of court and prosecution acts were processed and entered in the common database - Judicial Information System (JIS).

Criminal prosecution and confiscation of illicit gains

In this part, four measures were partly implemented and implementation of two measures did not begin at all.

With the aim to enforce the Implementation Plan for the Criminal Procedure Code, 21 trainings were organised for 433 judicial office holders and representatives of the police. No curricula and training programs for authorities dealing with financial investigations, detection, freezing, confiscation and management of illicit gains were prepared, but three trainings were organised on these topics.

In 2010, the Police Directorate initiated seven financial investigations before the Special Prosecutor's Office, while the Special Prosecutor's Office launched only two. The value of temporarily frozen assets in these financial investigations during 2010 amounted to less than one million euros.

The Property Administration claims that five vehicles acquired by committing criminal offenses were permanently confiscated in criminal procedure. On the other hand, the Supreme Court reported that there had been no enforceable judgments in Montenegrin courts to permanently confiscate assets obtained by committing criminal offenses with elements of corruption and organised crime.

Coordination and data exchange

In this part, one measure was implemented, six were partly implemented, while two were not implemented at all.

Four state bodies regularly provide statistical data on corruption reporting to the Directorate for Anti-Corruption Initiative (DACI), but at irregular intervals. In the reporting period, ten existing agreements on cooperation between state and other authorities were revised with the aim of efficient cooperation and data exchange. Annual DACI reports with analytical processing of data on corruption reporting were not prepared.

DACI had several media appearances with the aim of informing the public on activities undertaken to monitor corruption reporting cases, but it did not issue recommendations to institutions receiving reports of corruption whose aim is to improve outcomes in this field.

Trainings were organised for the police staff to whom corruption is reported, with five participants, while DACI organised one training for 13 participants from other state bodies who also receive reports of corruption. The Police and DACI prepared a standardised template for the receipt of reports of corruption.

International cooperation

In this part, two measures were implemented, three were partly implemented, while four measures were not implemented at all.

In order to improve international and regional cooperation in suppressing corruption, 18 international treaties and agreements with the EU countries, third countries and international organisations were signed in the reporting period. Operational cooperation agreement with Europol was not signed, neither was the Unit for Coordination of International Police Cooperation established, which is why there are no internal operating procedures. Data protection system for the work of organisational unit for international police cooperation is partially established and functional office space is provided only for the NCB Interpol office.

In the reporting period, the Police Directorate prepared two reports on outcomes of international cooperation, while the Ministry of Interior prepared one. Supreme State Prosecutor's Office prepared analysis of effects of implementation of international treaties and agreements and this institution also prepared a programme of international cooperation for the forthcoming period. Analyses and programmes developed by the Prosecutor's Office were not prepared by the Supreme Court, Ministry of Justice, Ministry of Interior, Administration for Prevention of Money Laundering, Customs Administration and Police Directorate, even though they were obligated to do so in the previous period.

The Customs Administration and Ministry of Interior have annual plan for signing agreements with the neighbouring countries, EU countries and international organisations, while the Administration for Prevention of Money Laundering and Terrorism Financing and Police Directorate have not developed these plans yet.

4.3. Organised crime

Activities relating to the field of "Organised Crime" are divided into five categories and include 32 measures. The field of organised crime includes the following sub-fields: situation analysis, predominant forms, prevention, cooperation between state bodies and regional and international cooperation.

Most measures for regional and international cooperation were implemented, whereas no measures were implemented in parts referring to the cooperation between state bodies and situation analysis of organised crime.

Organised crime	Implemented	Partly implemented	Not implemented
Situation analysis	0	2	2
Predominant forms	1	12	6
Prevention	1	4	4
Cooperation between state bodies	0	1	1
Regional and international cooperation	3	3	3

Table 15: Review of implementation of measures in the organised crime chapter (by fields)

4.3.1. Situation analysis

In this part, two measures were partly implemented, whereas two measures were not implemented at all.

The Police Directorate and Administration for Prevention of Money Laundering and Terrorism Financing (APML TF) did not prepare analysis of crime situation in Montenegro, as well as the analysis of the impact of organised and serious crime in the region on the situation in Montenegro, according to EU-OCTA standards.

The Police Directorate managed to identify six fields of particular risk whereas APML TF failed to do so. The Police Directorate also states that it has defined clear priorities in the fight against organised crime, whereas APML TF has not implemented this measure as well.

4.3.2. Predominant forms

In this part, one measure was implemented, 12 were partly implemented, while six measures were not implemented at all.

The Police Directorate did not increase the number of staff members who work on financial investigations. Inter-agency cooperation was enabled through establishment of a special investigative team in February 2010, but there was no information whether this cooperation was further improved.

Six specialised trainings on financial investigations were organised for 22 participants from the Police Directorate and APML TF. The Police Directorate did not adopt a rulebook based on which employees who work on organised crime cases in the local branches will be deployed. For the time being, only one local branch has necessary conditions for crime related and criminal-intelligence operations and adequate facilities for employees engaged in fighting against organised crime and corruption in local branches. System for conducting border control has been partially upgraded, along with the information networking of intelligence operations system EGP - IGP - SGP.

The Police Directorate developed a proposal for the new organisation of the existing Special Verification Unit and distributed the Handbook on Criminal-Intelligence Operations to its staff. DESKs have not been established yet at the central and local branches level.

In the reporting period, three trainings were delivered for 12 police officers on implementation of the Criminal Procedure Code and investigations with the use of covert surveillance measures, financial investigations and confiscation of illicit gains.

A special fund for intelligence and operational activities was not established. The Police Directorate states that it has acquired new equipment to conduct investigations and apply covert surveillance measures. The second phase of the project "Intelligence-Led Policing" was not implemented, whereas the number of operational analysts working on serious and organised crime got increased by 16.

Guidelines for harmonisation of methods of presenting statistical data have not been prepared by the Police Directorate, Prosecutor's Office and judiciary. Criminal - intelligence units in local branches of the Police Directorate were not established, neither was the risk analysis system in the Border Police Department established. Moreover, a single database with operational data of the Police Directorate, Prosecutor's Office and judiciary has not been established as well.

The Police Directorate established links with databases of two providers of telecommunication services for the purpose of data collection.

4.3.3. Prevention

In this part, one measure was implemented, four were partly implemented, and that same number of measures was not implemented at all.

In the framework of international projects for specialisation of entities participating in the process of suppressing organised crime, 69 trainings for Montenegrin employees were delivered. In the reporting period, 13 regional seminars and international conferences were held as well, with the participation of 39 employees of the Police Directorate, Police Academy and Judicial Training Centre. The total of 377 employees have undergone training and specialisation at the Police Academy.

In 2010, the Police Directorate did not adopt integrity plan, but it developed a six-month analysis of Ethics Committee on implementation of the Code of Ethics. Due to violation of the Code of Police Ethics, 19 disciplinary proceedings were initiated against employees of the Police Directorate. Trainings of police officers on application of the Guidelines on Corruption Reporting to the Police have not been delivered.

In 2010, the Police Directorate established a link with computer network of the Customs Administration, while the Tax Administration established a link with the Customs Administration, Ministry for Information Society, Pension and Disability Insurance Fund,

Health Insurance Fund, Employment Office of Montenegro, Central Registry of Population, Personnel Information System and Registry of Fines and Misdemeanour Records.

Agreements on cooperation with countries of the region for improvement of regional cooperation in the field of protection of witnesses who are victims of organised crime have not yet been signed yet. The Police Directorate and Police Academy did not organise trainings for employees of the Witness Protection Unit, neither was the special equipment for this unit acquired.

4.3.4. Cooperation between state bodies

One measure was partly implemented, while one measure was not implemented at all.

The National Coordination Office for Suppressing Organised Crime has not been established because the Police Directorate and Ministry of Interior, the only one identified as responsible for the implementation of the measure, declared that they had no competence in that regard.

Special investigative team conducted investigations and brought charges for four cases of criminal offenses of corruption and organised crime, of which two were financial investigations.

4.3.5. Regional and international cooperation

In this part, three measures were implemented, and that same number of measures was partly implemented and not implemented at all.

The Police Directorate has not fully established a system for monitoring the implementation of international standards and best practices for suppressing organised crime. Organisational unit for international cooperation has not been established due to the failure to adopt the Rulebook on organisation and job descriptions of the Police Directorate. The Police Directorate held 38 meetings and implemented 704 joint activities with the Border Police of the neighbouring countries.

Representatives of the NCB Interpol of Montenegro participated in seven working groups dealing with the fight against organised crime in the region. The Police Directorate emphasises that activities on procurement of computer equipment whose value is estimated at EUR 20,000¹⁴⁸ for the need of Interpol are in progress in cooperation with the General Secretariat of Interpol. All the 29 border crossings are networked with the NCB Interpol. The National Bureau of Europol has not yet been established yet.

Representatives of the prosecution office and judiciary of Montenegro participated in 37 regional consultation meetings on investigations of criminal offenses with elements of organised crime and participated in six joint investigations.

¹⁴⁸Based on Analysis and Needs Assessment prepared during 2010, funds amounting to EUR 20,000 were provided through Interpol and SEPC.

4.4. MONITORING

Monitoring field has five measures, one of which was implemented, one was partly implemented and one was not implemented, whereas implementation of two measures was not evaluated.

In the reporting period, DACI did not prepare either software solution or methodological guidelines for monitoring the implementation of the Action Plan by all the reporting entities, but it designed a template used by institutions in reporting on implementation of measures set forth in the Action Plan, which was delivered to all the reporting entities. In the reporting period, DACI did not organise training for representatives of institutions on how to use software and report on implementation of this Action Plan through the forms.

Website of the National Commission is regularly updated, while 10 new documents were published last year.

In the reporting period, not a single report on implementation of the Action Plan¹⁴⁹ by institutions was submitted, but later on 74 reports were submitted out of the total 93 institutions which implemented measures from this document. The six-month report of the National Commission was not prepared because the deadline for submission of individual reports based on which the report of the National Commission is prepared was envisaged for January 2011. This was the reason why this measure was not evaluated.

¹⁴⁹Deadline for submission of the report was 25 January 2011, therefore it was not possible to evaluate this measure.

ANNEXES

Annex 1: Review of agendas of the new National Commission sessions

I session, held on 22 October 2010.

1. Adoption of the Rules of Procedure of the National Commission;
2. Proposal for reporting methodology with proposed template for reporting on implementation of the Action Plan and List of reporting entities, and
3. Current affairs

II session, held on 20 December 2010

1. Adoption of Minutes from inaugural session of the National Commission;
2. Review of the European Commission Enlargement Package - the document for Montenegro:
 - a) Opinion of the Commission on European Union membership application of Montenegro,
 - b) Analytical report for Montenegro accompanied by the Opinion,
 - c) Enlargement Strategy and Main Challenges 2010-2011;
3. Current affairs

III session, held on 11 February 2011

1. Adoption of Minutes from the II (second) session of the National Commission,
2. Determination of further methodology of work of the National Commission:
 - a) Initiative for amendments to the Rules of Procedure of the National Commission (Official Gazette of Montenegro 76/10);
 - b) Proposal for the Decision on establishing Tripartite Commission for analysis of cases in field of organised crime and corruption, as well as the reporting and development of a unique methodology of statistical indicators in the field of organised crime and corruption,
 - c) Initiative for establishment of the National Commission expert team.
3. Launching initiative for innovation of the Action plan for implementation of the Strategy for the Fight against Corruption and Organised Crime:
 - a) Harmonisation of the Action Plan for implementation of the Strategy for the Fight against Corruption and Organised Crime with priorities set forth in the Action Plan for monitoring implementation of recommendations from the European Commission Opinion, and

- b) Proposed recommendations by the Network for the Affirmation of Non-Governmental Sector for harmonisation of the Action Plan for implementation of the Strategy for the Fight against Corruption and Organised Crime 2010-2012 with the Analytical Opinion of European Commission.

4. Current affairs

IV session, held on 04 April 2011

1. Adoption of Minutes from the III (third) session of the National Commission,
2. Proposal for the Decision on amendments to the Rules of Procedure of the National Commission for implementation of the Strategy for the Fight against Corruption and Organised Crime (Official Gazette of Montenegro 76/10),
3. Proposal for the first report on implementation of measures set forth in the Action Plan for implementation of the Strategy for the Fight against Corruption and Organised Crime,
4. Proposal for the Decision on remunerations to the members of the National Commission Secretariat, members of Tripartite Commission, person who provides technical support to its work and experts who provide expert assistance to the National Commission Secretariat,
5. Current affairs

Annex 2: consolidation of evaluations of reforms

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
5 Analyse and ensure harmonisation of legislation with international standards in the field of the fight against corruption and organised crime	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
6 Continue with harmonisation of legislation with the UN Convention (Palermo, UNTOC Convention) and other conventions in the field of the fight against organised crime	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
10 Analyse the existing legislative framework for the work of the State Electoral Commission	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
18 Signing of agreements with state bodies	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
19 Signing of agreements with similar institutions in the region and third countries, as well as with international organisations	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
25 Adopt integrity plans in public sector	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
29 Revise and change recruitment regime in civil service (of civil servants and state employees) with introduction of objective criteria and more advanced methods for testing the candidates	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
31 Analyse the existing condition and propose objective criteria for promotion and rewarding of employees, with the aim of preserving high quality staff and managing human resources (merit-based career system)	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
32 Revise the Code of Ethics of civil servants and state employees and other individual codes	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
33 Training of civil servants and state employees at the central and local level on the Code of Ethics, including their obligation to sign declaration on acceptance of the Code of Ethics (during recruitment and once a year)	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
40 Lay down the obligation of employees - who are responsible for responding to requests for free access to information - to submit quarterly reports on implementation of the law, reasons for denial of access to information and judgments of the Constitutional Court to the second instance authority (which exercises oversight of implementation of the law)	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
41 Regular update and availability of all the data from the scope of competence of state bodies and administrative bodies, through: - Web presentation of institutions; - Development of electronic services adjusted to citizens and business entities;	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
43 Analyse the need for adoption of a special law and improve mechanisms for the protection against negative effects	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
44 Expand the scope of protection to all the employed persons	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
50 Promote good practice in corruption reporting (particularly if such reporting had impact on the prevention of punishable offence, occurrence of damage or if it revealed complex procedures which leave room for corruptive acts)	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
51 Conduct campaigns with the aim of public awareness raising and encouraging citizens to report corruption	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
58 Presentation of SAI audit findings at regular press conferences after audits have been finished	Implemented	Jointly revised evaluation	Partly implemented
61 Education of auditing staff to carry out audit of IPA funds and audit of cost-effectiveness, efficiency and effectiveness	Implemented	The Secretariat accepted evaluation of MANS	Not implemented
65 Continuously exercise control of compliance with recommendations from the State Audit Institution findings	Implemented	Jointly revised evaluation	Partly implemented
67 Prepare a six-month report on the work of the Property Administration and Protector of Property and Legal Interests of Montenegro	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
69 Staffing in accordance with the Rulebook on internal organisation and job descriptions and training of new staff	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
70 Building technical capacities through defining the needs and purchasing of necessary equipment	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
75 Law on Insurance	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
78 Development of information system of participants in capital market by increasing efficiency and reliability of IT systems of the Securities Commission, CDA and all the participants in capital market	Not implemented	The Secretariat accepted evaluation of MANS	Partly implemented
81 Improvement of financial reporting by authorised participants (companies, investment funds), develop public information booklet	Not implemented	The Secretariat accepted evaluation of MANS	Partly implemented
82 Development of the new action plan for the reform of the ease of doing business	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
83 Implementation of the Law on Improvement of Business Environment	Implemented	Jointly revised evaluation	Partly implemented

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
88 Prepare reports on implementation of privatisation contracts	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
89 Enable access to information on privatisation contracts in accordance with the Law on Free Access to Information	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
90 Continuous training of persons authorised to issue decisions on access to information	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
92 Regular meetings of the Commission for Monitoring and Control of the Privatisation Procedure	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
93 Organising public debates on plans and strategies for privatisation of strategically important enterprises, particularly in the fields of energy, transportation, tourism and privatisation of public enterprises	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
95 By-laws and other pieces of secondary regulations and other acts	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
96 The Strategy for the Development of Public Procurement System for the Period 2011-2014	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
109 Training of inspectors	Implemented	MANS accepted evaluation of the Secretariat	Implemented
120 Upgrade criteria for scholarship award and granting of loans as well as for the admission to pupil and student dormitories so as to achieve their full transparency and objectivity	Implemented	Jointly revised evaluation	Partly implemented
122 Development of knowledge standards at all levels of students' achievements	Not implemented	Jointly revised evaluation	Partly implemented
125 Set up quality assurance centres in each higher education institution	Implemented	Jointly revised evaluation	Partly implemented

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
127 Set up a special phone line for corruption cases reporting	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
131 Involvement of parents and NGO representatives in monitoring implementation of activities set forth in the AP	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
138 Reporting on implementation of the AP for the fight against corruption in the field of education	Implemented	MANS accepted evaluation of the Secretariat	Implemented
140 Efficient commencement and conducting of disciplinary proceedings resulting from violation of the Code	Implemented	Jointly revised evaluation	Partly implemented
145 Recognition and observance of patient rights in the fields defined by law	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
148 Submission of reports on the public procurement quality by the Ministry of Health	Not implemented	Jointly revised evaluation	Implemented
152 Ensure free access to information	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
154 Conduct external audit of financial operations of municipalities	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
155 Reporting on the work of the Council for the Development and Protection of Local Government	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
160 Promote the “empty chair” institute in local parliaments	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
161 Improve cooperation between citizens and local government authorities	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
164 Amend legislative framework which regulates establishment of NGOs and auditing of their financial operations so as to prevent the abuse of NGO status	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
176 Define the need and purchase necessary equipment to improve the work of the Department	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
180 Continuously conduct campaigns on how to report corruption and measures for the protection of citizens who report corruption	Partly implemented	MANS accepted evaluation of the Secretariat	Not implemented
182 Hold press conferences of the President of the Judicial Council and President of the Prosecutorial Council every six months	Implemented	MANS accepted evaluation of the Secretariat	Implemented
185 Organise event “Open Doors” in courts and prosecution offices	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
199 Conduct financial investigations for the purpose of extended confiscation of illicit gains by state bodies that are responsible for detecting and prosecuting criminal offenders	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
201 Set up the system for mandatory delivery of statistical data on corruption reporting and further proceedings to the Directorate for Anti-Corruption Initiative	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
202 Develop appropriate information system for the delivery of data on corruption reporting to the Directorate for Anti-Corruption Initiative	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
206 Inform general and expert public on activities related to monitoring of corruption reporting	Implemented	Jointly revised evaluation	Partly implemented
208 Deliver trainings to the staff of the Directorate for Anti-Corruption Initiative, Police Directorate, Customs Administration and Public Procurement Directorate to whom corruption is reported	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
217 Preparation of annual plans for signing bilateral agreements on cooperation	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
218 Analysis of effects of implementation of international treaties and agreements: <ul style="list-style-type: none"> • With countries in the region • With the EU countries • With international organisations 	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
219 Analysis of the crime situation in Montenegro	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
220 Identification of vulnerable fields in the system	Not implemented	The Secretariat accepted evaluation of MANS	Partly implemented
221 Setting up clear priorities in the field of the fight against organised crime	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
223 Increase the number of staff members working in financial investigations	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
224 Improve inter-agency cooperation through the special investigative team	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
227 Provide necessary conditions for working on crime related and criminal-intelligence operations in local branches	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
230 Provide functional officespace for staff members working on the fight against organised crime and corruption in local branches	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
238 Set up criminal-intelligence units in local branches of the Police Directorate	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
240 Set up a single database with operational data	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
248 Improvement of regional cooperation and signing agreements with appropriate services of the countries in the region in the field of protection of witnesses who are victims of organised crime	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented

Measure	Evaluation of implementation of the measure before consolidation	Consolidation	Final evaluation of implementation of the measure
252 Create conditions and capacities for more efficient performance of the joint investigative team	Partly implemented	MANS accepted evaluation of the Secretariat	Partly implemented
253 High quality management and implementation of standards and best practices, control and monitoring	Implemented	The Secretariat accepted evaluation of MANS	Partly implemented
254 Set up organisational unit for international cooperation, with central management of all the essential functions of international police cooperation (INTERPOL, EUROPOL, SIRENE; SECI, other international police organisations, liaison officers)	Partly implemented	The Secretariat accepted evaluation of MANS	Not implemented
264 Submission of six-month reports by entities obligated to report under the AP	Partly implemented	Jointly revised evaluation	No evaluation
265 Preparation of the six-month report by the National Commission	Partly implemented	Jointly revised evaluation	No evaluation

Annex 3: Responses of institutions to requests for free access to information regarding implementation of measures set forth in the action plan

Competent institution	No. of requests	Access granted		Not competent		No information		Banned / Denied		Silence	
	In figures	In figures	In %	In figures	In %	In figures	In %	In figures	In %	In figures	In %
Judicial Training Centre	12	5	42 %	0	0%	7	58%	0	0%	0	0%
Vocational Education Centre	21	0	0%	0	0%	20	95%	0	0%	0	0%
Public Procurement Directorate	4	1	25%	0	0%	2	50%	0	0%	1	25%
State Audit Institution	55	14	25%	0	0%	22	40%	1	2%	0	0%
Securities Commission	33	9	27%	2	6%	16	48%	6	18%	0	0%
Ministry of Economy	21	4	19%	0	0%	6	29%	0	0%	11	52%
Ministry of Finance	40	10	25%	13	33%	15	37%	1	2 %	1	3%
Ministry of Justice	43	0	0%	0	0%	42	98%	0	0%	0	0%
Ministry of Education / Ministry of Science	63	19	30 %	9	14%	18	29%	2	3%	1	2%
Ministry of Labour and Social Welfare	3	1	33%	0	0%	0	0%	0	0%	0	0%
Ministry of Transport and Maritime Affairs	9	3	33%	0	0%	4	44%	0	0%	2	22%
Ministry of Interior	171	52	30%	97	57%	12	7%	1	1%	9	5 %
Ministry of Sustainable Development and Tourism	38	8	21%	2	5%	5	13%	0	0%	15	39%
Ministry of Foreign Affairs and European Integration	6	5	83%	0	0%	0	0%	0	0%	1	17%
Ministry of Health	38	28	74%	0	0%	10	26%	0	0%	0	0%
Police Academy	44	13	30%	4	9%	27	61%	0	0%	0	0%
Tax Administration	25	5	20%	6	24%	0	0%	3	12%	2	8%

Competent institution	No. of requests	Access granted		Not competent		No information		Banned / Denied		Silence	
	In figures	In figures	In %	In figures	In %	In figures	In %	In figures	In %	In figures	In %
Privatisation Council	27	12	44%	0	0%	1	4%	5	19%	0	0%
Parliament of Montenegro	18	0	0%	0	0%	18	100%	0	0%	0	0%
Judicial Council	38	0	0%	0	0%	32	84%	5	13%	1	3%
Prosecutorial Council	30	3	10%	0	0%	21	70%	0	0%	0	0%
Customs Administration	15	9	60%	0	0%	4	27%	1	7%	1	7%
Police Directorate	227	36	16%	49	22%	65	29%	10	4%	62	27%
Directorate for Anti-Corruption Initiative	86	5	6%	0	0%	50	58%	0	0%	2	2%
Human Resources Management Authority	34	12	35%	0	0%	21	62%	0	0%	1	3%
Administration for Prevention of Money Laundering	38	5	13%	0	0%	32	84%	0	0%	0	0%
Supreme Court	36	1	3%	0	0%	34	94%	0	0%	0	0%
Supreme State Prosecution Office of Montenegro	48	1	2%	0	0%	47	98%	0	0%	0	0%
TOTAL		259	23%	182	16%	457	40%	35	3%	111	10%

GRAPHS

- Graph 1: Changes in jurisdiction of courts (2004- 2010)
- Graph 2: Corruption offences - first instance courts (2006-2010)
- Graph 3: Basic courts - first instance proceedings - corruption offences (2006-2010)
- Graph 4: High courts - first instance proceedings - corruption offences (2006-2010)
- Graph 5: Years when charges were brought as per which basic and high courts passed judgments over the period 2006-2010
- Graph 6: Number of proceedings by accused, all courts (2006-2010)
- Graph 7: First instance judgments - by cases (2006-2010)
- Graph 8: Basic courts judgments - by cases (2006- 2010)
- Graph 9: High courts judgments - by cases (2006-2010)
- Graph 10: Judgments in corruption cases by year - basic and high courts (2006-2010)
- Graph 11: Basic courts - convictions - by offences (2006-2010)
- Graph 12: High courts - convictions - by offences (2006-2010)
- Graph 13: Basic courts - number of indictments and convictions (2006-2010)
- Graph 14: High courts - number of indictments and convictions by offence (2006-2010)
- Graph 15: Basic courts - number of proceedings per different types of convicted persons (2006-2010)
- Graph 16: High courts - number of proceedings per different types of convicted persons (2006-2010)
- Graph 17: Basic courts - punishments pronounced (by persons) (2006-2010)
- Graph 18: High courts - punishments pronounced (by persons) (2006-2010)
- Graph 19: Reasons for acquittals
- Graph 20: Result of reversing the first instance judgments (all second instance courts)
- Graph 21: Judgments of the Basic Court Bijelo Polje (by number of persons)
- Graph 22: Judgments of the Basic Court Berane (by number of persons)
- Graph 23: Judgments of the Basic Court Kolašin (by number of persons)
- Graph 24: Judgments of the Basic Court Pljevlja (by number of persons)
- Graph 25: Judgments of the Basic Court Rožaje (by number of persons)
- Graph 26: Judgments of the Basic Court Žabljak (by number of persons)
- Graph 27: Average length of proceedings leading to various judgments
- Graph 28: Basic courts - total duration of proceedings leading to various judgments
- Graph 29: High courts - total duration of proceedings leading to various judgments
- Graph 30: Duration of investigation, first and second instance proceedings
- Graph 31: Estimated amounts of damages in indictments in cases ending in convictions
- Graph 32: Awarded damages (2006-2010)
- Graphs 33 and 34: Total estimated damages in indictments and awarded damages (for convictions) and in all cases ending in convictions
- Graph 35: Duration of investigation, first and second instance proceedings
- Graph 36: Criminal Code amendments - abuse of office
- Graph 37: Ping-pong cases - length of proceedings
- Graph 38: Years of bringing charges and first instance judgments for active and passive bribery
- Graph 39: Structure of the National Commission
- Graph 40: Consolidation of evaluations of implementation of measures set forth in the Action Plan
- Graph 41: Review of proceedings in the case of agreement between the police and telecommunications operators
- Graph 42: Responses to requests for access to information
- Graph 43: Received responses by phases of administrative proceedings
- Graph 44: Lawsuits filed on grounds of requests for access to information
- Graph 45: Level of implementation of measures set forth in the Action Plan
- Graph 46: Corruption
- Graph 47: Organised crime
- Graph 48: Monitoring

TABLES

Table 1: Responses of basic courts as per requests for providing copies of enforceable judgements in corruption cases

Table 2: Number of available first instance judgments, the accused and offences (2006-2010)

Table 3: Number of offences for which first instance judgments were passed (2006-2010)

Table 4: First instance judgments - convictions (2006-2010)

Table 5: Length of proceedings by court (in months)

Table 6: Examples of convictions for abuse of office pronounced by basic courts

Table 7: Examples of convictions for abuse of authorities in business pronounced by basic courts

Table 8: Examples of convictions for abuse of office pronounced by high courts

Table 9: Examples of punishments for active bribery

Table 10: Covert surveillance - overview of authorities from the old and the new law

Table 11: Punishments envisaged for accepting and offering gifts and bribes

Table 12: Review of implementation of measures in the field of priorities in suppressing corruption at the political and international level (by subfields)

Table 13: Review of implementation of measures in the fields of particular risk

Table 14: Review of the implementation of measures in the field of prevention of corruption in law enforcement agencies (by subfields)

Table 15: Review of implementation of measures in the organised crime chapter (by fields)